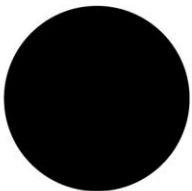


**STATEMENT SUPPORTING THE PRUDENTIAL
STANDARD – REGULATION 28 QUARTERLY
REPORTING REQUIREMENTS FOR PENSION
FUNDS**



DATE OF ISSUE: November 2023

1 PURPOSE OF THE STATEMENT

- 1.1 This Statement relates to the publication by the Financial Sector Conduct Authority (“FSCA”) of the Prudential Standard 1 of 2023: *Regulation 28 Quarterly Reporting Requirements for Pension funds*. The FSCA intends to make this Prudential Standard in terms of regulation 28(8)(a) of the Regulations under the Pension Fund Act, 1956 (Act No. 24 of 1956)¹ (“Regulations”) and section 105 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (“FSR Act”), read with sections 105(2), 108(1)(j) and 292(2)(b), (3) and (4) of the FSR Act.
- 1.2 This Statement is published in accordance with section 98(1)(a)(ii) of the FSR Act and is intended to give support and context to the Prudential Standard. The Statement explains the need for, the expected impact of, and the intended operation of the Prudential Standard.

2 STATEMENT OF NEED – POLICY CONTEXT AND PROBLEM DEFINITION

- 2.1 Regulation 28 protects retirement fund member savings by limiting the extent to which funds may invest in a particular asset or in particular asset classes. Regulation 28(8)(a) provides that the Authority, “... *may prescribe the format, content and any other particulars in respect of disclosure of compliance with this Regulation*”.
- 2.2 In addition, section 108(1)(j) of the FSR Act provides that a Prudential Standard may be made on reporting by financial institutions to a financial sector regulator.
- 2.3 In respect of Regulation 28, funds are currently only required, as prescribed in different Notices, to report instances of non-compliance with Regulation 28 on a quarterly basis. Holistic quarterly reporting of assets held in accordance with Regulation 28 is therefore not required and funds are only obliged to compile, as part of its annual financial statements, an audited report on assets held in compliance with Regulation 28 (see Schedule IB of Board Notice 77 of 2014, published in Government Gazette No. 37844 of 18 July 2014).
- 2.4 Further, Regulation 28 was revised in July 2022 and, among others, requires additional reporting requirements in relation to infrastructure assets and other amendments to the asset spreading requirements. The Regulation 28 amendments came into effect on 3 January 2023. To ensure alignment with the amendments to Regulation 28, the FSCA published a draft Prudential Standard titled “Regulation 28 quarterly reporting requirements for pension funds” (draft Prudential Standard) for public comment on 4 November 2022. The draft Prudential Standard was viewed as urgent as it was imperative that the quarterly reports take into account the amendments to Regulation 28 and ensure that pension funds appropriately report on these matters. The urgency was informed by the fact that the Regulations was amended on 3 January 2023, thereby resulting in the regulation 28 quarterly reporting requirements being misaligned with the Regulations. This misalignment will result in possible non-compliance not being reported, thereby having the potential of placing pension fund members at risk and prejudicing financial customers. The normal process for making regulatory instruments as prescribed in sections 98 and 103(1) would likely result in delays, thereby perpetuating the aforementioned misalignment and risks for an extended period of time. As such, the FSCA is intending to issue the Prudential Standard on an urgent basis as contemplated in section 100 of the FSR Act. Further detail surrounding urgency was also explained in paragraphs 2.5 to 2.11 of the Statement Supporting the Prudential Standard – Regulation 28 Quarterly Reporting Requirements for Pension Funds that was published for comment on 4 November 2022.

¹ Published in Government Notice R98 of Government Gazette No. 126 on 26 January 1962, as amended from time to time.

- 2.5 However, the opportunity to amend the Regulation 28 quarterly reporting requirements was also used to change the “exception reporting” approach as per the current Board Notices to an approach where funds report on assets held in compliance with Regulation 28 (holistic reporting).
- 2.6 The current “exception reporting” approach is problematic in the sense that it does not allow for or enable proactive and preemptive supervision in the context of Regulation 28. There has, for example, been an increase in funds not submitting their current Regulation 28 non-compliance reports, yet auditors picked up non-compliance in the audited annual financial statements. This results in a very reactive approach to supervising compliance with Regulation 28 which creates risk and is ineffective. Further, it also results in boards of pension funds not proactively and effectively managing compliance with Regulation 28. Holistic Regulation 28 quarterly reporting will assist the FSCA to proactively monitor and manage potential and actual Regulation 28 breaches. It will also force boards of pension funds to proactively monitor compliance with Regulation 28 and take timely corrective action.
- 2.7 The FSCA therefore retains the view that there is a need to –
- (a) align the Regulation 28 reporting to the amended regulations on an urgent basis; and
 - (b) provide for holistic (unaudited) quarterly reporting on assets in terms of Regulation 28.
- 2.8 However, the FSCA notes that public comments received on the draft Prudential Standard raised concerns with the change in approach and also highlighted significant timing pressures in giving effect to this new approach. The FSCA is of the view that the timing pressures are created because of the inclusion of the requirement to also report assets held in compliance with Regulation 28 and not only non-compliance with Regulation 28. The FSCA is of the view that the concerns raised are valid, and we agree that funds should be afforded more time to prepare for the implementation of quarterly reporting on assets held in compliance with Regulation 28. However, the FSCA remains of the view that it is an imperative that the current non-compliance with Regulation 28 quarterly reporting is aligned with the amended Regulation 28 as soon as possible.
- 2.9 As such, the FSCA will implement the following approach:
- To deal with the immediate issue of misalignment with the amended Regulation 28, the FSCA will proceed to finalise the draft Prudential Standard on an urgent basis as contemplated in section 100(1)(b) read with section 103(2). However, the requirement to report assets held in compliance with Regulation 28 on a quarterly basis has been removed from the draft Prudential Standard, for now.
 - Concurrently, the FSCA will proceed to publish a new draft Prudential Standard for public consultation which incorporates both non-compliance reporting and reporting on assets held in compliance with Regulation 28. The latter Prudential Standard will ultimately replace the aforementioned Prudential Standard.
- 2.10 The finalisation of the Prudential Standard is therefore an interim step before moving into a new approach of dual quarterly reporting (non-compliance reporting and reporting on assets held in compliance with Regulation 28).

3 SUMMARY OF THE PRUDENTIAL STANDARD

- 3.1 The Prudential Standard prescribes quarterly reports for pension funds relating to assets held in terms of Regulation 28 (as amended). As explained above, the requirement to report on assets held in compliance with Regulation 28 on a quarterly basis has been removed from the Prudential Standard and the revised Prudential Standard therefore only requires pension funds to report any non-compliance with or breaches in terms of regulation 28 on a quarterly basis. If no non-compliance or breaches occurred, a fund does not have to submit a quarterly report.

- 3.2 The draft Prudential Standard that was published for public comment included the reporting tables/format in the Standard itself. However, the reporting tables/format has been removed from the draft Prudential Standard and an enabling provision has been inserted to ensure more flexibility and which states that the FSCA may determine the manner of submission and format of the required reporting. It is envisaged that the manner of reporting will be in electronic format on the online portal of the FSCA.
- 3.3 The draft Prudential Standard also repeals the following Notices:
- (a) Financial Services Board Notice No. 2 of 10 June 2011;
 - (b) Financial Services Board Notice No. 3 of 19 December 2011;
 - (c) Financial Services Board Notice No. 3 of 31 May 2012; and
 - (d) Financial Services Board Notice No. 6 of 2 October 2012.
- 3.4 In addition, the FSCA will also be withdrawing the following documents once the Prudential Standard takes effect:
- (a) The Exemption from Regulation 28(8)(b) – Requirements for Audit Certificate of Compliance with Regulation 28 published under PF Notice 2 of 2014 on 20 October 2014; and
 - (b) Directive 157.A.i (LT), providing guidance on guaranteed and partially guaranteed policy benefits for purposes of regulation 28(8)(b)(iii) of the Regulations made under section 36 of the Pension Funds Act No. 24 of 1956.

4 STATEMENT OF IMPACT OF THE PRUDENTIAL STANDARD

- 4.1 Various commentators that commented on the draft Prudential Standard were concerned that the Prudential Standard requires that all funds must report on compliance and non-compliance. Commentators contended that currently the quarterly reporting is limited to non-compliance reporting and if there is no non-compliance, a report is not submitted. Some commentators opined that the funds or the public will gain no benefit in any meaningful way through this additional regulatory burden which will not be trivial for the funds in terms of either effort or cost. Other commentators contended that the submission of quarterly reports would bring about an additional regulatory burden which is likely to lead to an increase in costs.
- 4.2 The need for quarterly reporting on assets held in compliance with Regulation 28 is explained above. However, since the requirement to report on assets held in compliance with Regulation 28 has been removed from the draft Prudential Standard, these comments are no longer relevant for purposes of the draft Prudential Standard.
- 4.3 Therefore, the only reporting requirement that remains in the draft Prudential Standard is for funds to report non-compliance with (the amended) Regulation 28. This is essentially a perpetuation of the current reporting approach and should not result in any cost implications for funds.

5 STATEMENT OF INTENDED OPERATION OF THE PRUDENTIAL STANDARD

- 5.1 The Prudential Standard is consistent with the objects of the FSR Act and Pension Fund Act, 1956 (Act No. 24 of 1956) and specifically the mandate of the FSCA.²
- 5.2 The Prudential Standard will become effective on the date of publication.
- 5.3 Following the implementation of the Prudential Standard, the FSCA will assess and evaluate the effect of the Prudential Standard on a continuous basis as part of its regulatory and supervisory responsibilities.

² As exercised in terms of section 292(2)(b), (3) and (4) of the FSR Act.