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FSCA Draft Conduct Standard – Conditions for Pension Fund Benefit Administrators

1. Why the need for this FSCA Draft Conduct Standard (“the DCS”)

- 1.1 At present, the administrators of retirement funds are regulated by Board Notice 24 (“BN24”). The DCS is intended to replace BN24 in its entirety. This is a draft conduct standard and the industry still has the opportunity to comment, but once the document has been presented to parliament in its final form and passed by that institution, the provisions of the document will become legislation.
- 1.2 The DCS is aligned with the draft Conduct of Financial Institutions (“COFI”) Bill. The Financial Sector Conduct Authority (“the FSCA”) have stressed the need for a broader approach to the financial sector, and accordingly the DCS places strong emphasis on business principles, culture and governance. The principle of Treating Customers Fairly (“TCF”) which has been a guiding principle for the FSCA for many years has now been incorporated into this proposed legislation. The governing body of the administrator is responsible for ensuring that TCF is at the heart of the corporate culture of the organisation.
- 1.3 The FSCA are of the view that BN24 does not capture any of the TCF outcomes, nor does it address certain critical areas, such as governance, fit and proper requirements, outsourcing and the management of conflicts of interest.

These aspects are key requirements in the proposed legislation.

2. Why is it important for Trustees to be aware of the Draft Conduct Standard?

- 2.1 The DCS defines the customer as the retirement fund and its members. The trustees have a fiduciary duty to the members of the fund, so trustees need to be comfortable that the organisation complies with the principles of the DCS before placing the business of the fund with a particular administrator. Employers also need to consider whether the administrator of the umbrella fund is compliant when selecting an umbrella fund.

2.2 The trustees will need to sign a new administration agreement with the administrator of the retirement fund and will need to be sure that the agreement complies with the requirements specified in Section 13 of the DCS. These requirements are very extensive and a good deal more onerous than the requirements which apply to administration agreements in terms of BN24.

3. Treating Customers Fairly

The principles of TCF are central to the DCS. Five principles are set out in Section 2 (2) of the DCS. In applying TCF to its business principles, the administrator must achieve the following outcomes: Trustees need to be sure that the administrator is applying these principles in its dealings with members of the retirement fund.

- 3.1 The fair treatment of customers is central to the benefit administrator’s culture;
- 3.2 Services provided by the benefit administrator are suitably designed to meet the needs of its customers;
- 3.3 The benefit administrator’s customers are given clear, timely and appropriate information, and are kept appropriately informed, at all relevant times;
- 3.4 Services provided to its customers are both of an acceptable standard and in line with expectations created by the benefit administrator; and
- 3.5 Customers do not face unreasonable post-contractual barriers imposed by the benefit administrator, including barriers related to changing products, switching benefit administrators and submitting complaints.

4. What other Key Aspect of the Draft Conduct Standard should the Trustees be aware of?

The DCS is very comprehensive so in this publication there is only scope to deal with a few of the main requirements.

4.1 Key person

The benefit administrator must appoint a key person to manage and oversee the performance of administrative functions. The key person must be a member of senior management and must be approved by the FSCA. The key person is responsible for reporting any irregularities in the operations of the administrator to the FSCA.

Trustees should know the identity of the key person at their administrator.

4.2 Fit and Proper Requirements

This is the first time the fit and proper requirements have been set out in the legislation intended to apply to retirement funds. Certain fit and proper requirements applicable to trustees are set out in fund rules, for example that a trustee should not have been found guilty of an offence such as an offence under the Corruption Act, 1992. The fit and proper requirements set out in the DCS include these requirements but are much more extensive, and include that the person concerned must not:

- 4.2.1 have been refused membership or have been disciplined or reprimanded by a professional body or a regulatory authority;
- 4.2.2 have been found guilty by an employer of misconduct related to fraud, dishonesty or lack of integrity;
- 4.2.3 have provided false or misleading information to the FSCA or have been uncooperative in his or her dealings with the FSCA.

The head of the administrator, its directors, all other senior staff and heads of control functions at the administrator must comply with the fit and proper requirements specified in the DCS.

4.3 Agreement with the Fund

The trustees will have to up-date their service level agreement ("the SLA") with the administrator to comply with the requirements of the DCS. At present, BN24 sets out 4 requirements with which the SLA must comply. The DCS has 20 requirements, including:

- 4.3.1 requirements relating to indemnity and fidelity guarantee policies that must be maintained by the benefit administrator;
- 4.3.2 the procedure relating to any breach of the conditions in the SLA;
- 4.3.3 details of how the benefit administrator will ensure proper governance, risk management and ethical behaviour;
- 4.3.4 the obligation on the fund to provide the benefit administrator, on an ongoing basis, with the relevant information in respect of members and employers participating in the fund.

Section 14 of the DCS deals with the conditions if the fund decides to change administrators which again are more comprehensive than in BN24.

4.4 Outsourcing

Many administrators outsource functions such as their IT support or their data storage. This seems to be a particular concern for the FSCA and the DCS prescribes conditions relating to outsourcing by benefit administrators, including the management, oversight and review of outsourcing agreements.

4.5 Conflicts of interest

The administrator must maintain a conflict of interest policy, which must include mechanisms for the identification of conflicts of interest, together with measures to avoid conflict of interest and if it is not possible to avoid a conflict of interest, the measures the administrator will take to mitigate the consequences. The policy must be published in appropriate media so that it is readily accessible to the public.

4.6 Complaints Procedure

4.6.1 The administrator must establish a complaints management framework. The governing body and the key person are responsible for effective complaints management and must approve and oversee the effectiveness of the implementation of the benefit administrator's complaints management framework.

4.6.2 The administrator must have a complaints escalation and review process.

4.6.3 The administrator must record all complaints received, and have a process in place to monitor and analyse complaints.

4.6.4 Communication with complainants must be in plain language. This is defined in the DCS as language that:

- (a) is clear and easy to understand;
- (b) avoids uncertainty or confusion; and
- (c) is adequate and appropriate in the circumstances, taking into account the factually established or reasonably assumed level of understanding of the person at whom the communication is targeted.

4.7 Data management and management of records

The DCS prescribes conditions relating to data management.

4.7.1 If the administrator relies on third parties to retain data, the administrator must be able to access the data at any time, as and when required by the administrator.

4.7.2 The administrator must retain records related to the period of its administration of a retirement fund for at least 5 years after the date on which the agreement with the retirement fund is terminated.

The administrator must also retain such records for at least 5 years after its own approval in terms of Section 13B of the Pension Funds Act is terminated. This information includes the names of members, their identity numbers, details of Section 14 transfers and details of benefit payments made during the period when it administered the retirement fund.

4.8 Financial Matters

- 4.8.1 A benefit administrator must establish and maintain a proper internal financial control system.
- 4.8.2 There are specific conditions related to the appointment of the auditor, who must be appointed annually. The FSCA must be informed of the appointment within 30 days. If the appointment is terminated, the FSCA must also be informed, within 30 days, of the reason for the termination and must at the same time be informed of the appointment of the new auditor.
- 4.8.3 Contributions received by the administrators must be paid into the fund's bank account within one day of receipt of the contributions.
- 4.8.4 A benefit administrator must have professional indemnity and fidelity guarantee insurance of such an amount as may be regarded as appropriate by the benefit administrator and its auditor, taking into account the size of the administrator and the number of funds under management.
- 4.8.5 There are also specific conditions which apply if the administrator utilises a trust account.

4.9 Financial Soundness and Operational Ability

- 4.9.1 A benefit administrator must at all times maintain a minimum capital of R3,000,000.00. Furthermore, where the administrator is regulated by the FSCA in terms of other legislation, it must always comply with the most onerous requirements.
- 4.9.2 The DSC also requires that the administrator must have the operational ability, including adequate and appropriate human and technical resources, in particular its administration system, which will enable it to ensure that accurate and complete data and records are maintained. The administration system must also be able to comply with legislative reporting requirements and enable proper member communication. If the administration system is changed, the administrator is required to inform funds that may be affected by the change.

4.10 Mergers, Acquisitions and Termination of Approval.

The DCS also regulates mergers and acquisitions by the administrator and requires that if the administrator's approval is terminated by the FSCA, it must inform all funds under management of the termination.

5. What are the implications for the DCS on the retirement funds industry?

- 5.1 The FSCA have stated that the intention of the DCS is to lead to improved administrative services by benefit administrators which in turn will lead to improved outcomes for members of retirement funds.
- 5.2 However, the FSCA have acknowledged that the additional requirements will have a cost implication, due to additional administrative burdens and compliance costs. They believe that the additional costs will not be exorbitant and are justified in the light of the expected outcomes.
- 5.3 In practice, it may be very difficult for some of the smaller administrators and for free-standing funds which are self-administered to comply with the requirements of the DCS and to continue to provide a service to retirement funds without a major increase in their costs.

5.4 This is still a draft conduct standard and the retirement funds industry have until 13 September 2021 to provide comment to the FSCA, so there may still be changes.

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