



**STATEMENT SUPPORTING THE DRAFT CONDUCT  
STANDARD – CONDITIONS FOR SECURITIES  
LENDING FOR PENSION FUNDS**

**DATE OF ISSUE: 7 OCTOBER 2020**

## 1 PURPOSE OF THE STATEMENT

- 1.1 This statement relates to the publication of the draft Conduct Standard prescribing conditions for securities lending for pension funds (draft Conduct Standard) to be made in terms of section 106(1)(a) of the Financial Sector Regulation Act, 2017 (FSR Act) and Regulation 28(6) of the Regulations made under the Pension Funds Act, 1956 (Regulations).
- 1.2 The purpose of this statement is to explain the need for, expected impact and intended operation of the draft Conduct Standard as required by section 98(1)(a) of the FSR Act.

## 2 BACKGROUND

- 2.1 In terms of section 98 of the FSR Act, before a financial sector regulator makes a regulatory instrument,<sup>1</sup> it is required to publish the following documents:
  - (a) a draft of the regulatory instrument;
  - (b) a statement explaining the need for and the intended operation of the regulatory instrument;
  - (c) a statement of the expected impact of the regulatory instrument; and
  - (d) a notice inviting submissions in relation to the regulatory instrument, stating where, how and by when submissions are to be made.
- 2.2 In fulfilment of the above-mentioned requirements, the Financial Sector Conduct Authority (FSCA) has prepared a statement of the need for, intended operation and expected impact of the Conduct Standard prescribing conditions for securities lending for pension funds (Statement).
- 2.3 The Statement takes into account, the responses received on the draft Conduct Standard prescribing conditions for securities lending for pension funds that was published for public comment on 11 January 2017 as a draft Notice on Regulation 28 (the draft Notice).
- 2.4 As the comments necessitated substantive changes to the draft Notice and with the coming into operation of the FSR Act, the draft Notice was revised and converted into a draft Conduct Standard which is being published for a first round of public consultation.

## 3 STATEMENT OF NEED – POLICY CONTEXT AND PROBLEM DEFINITION

- 3.1 Regulation 28(6) provides that pension funds may engage in securities lending and enables the FSCA to prescribe conditions in respect thereof. Fund assets represent a significant portion of investable assets of financial institutions and such assets form a large base of the securities lending in the financial industry.
- 3.2 Securities lending enable a fund to earn additional income to the benefit of the fund and its members. In order to balance the benefit with the possible risks associated with securities lending, the FSCA deems it appropriate to prescribe conditions by providing for general principles, and requirements pertaining to service providers, agents, counterparties, lending limits and collateral etc. The draft Conduct Standard proposes to prescribe such requirements.

## 4 SUMMARY OF THE DRAFT CONDUCT STANDARD

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<sup>1</sup> In terms of the FSRA, a “regulatory instrument” includes a conduct standard.  
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- 4.1 The draft Conduct Standard sets out overarching principles for securities lending and prescribes amongst others conditions in respect of -
- (a) the delegation of administration of securities lending agreements to a service provider;
  - (b) the appointment of agents to enter into securities lending transactions on behalf of the fund;
  - (c) counterparties with whom a fund may enter into securities lending agreements;
  - (d) reviewing and monitoring of securities lent by the fund;
  - (e) right of recall of any securities lent by the fund;
  - (f) securities lending limits;
  - (g) collateral;
  - (h) contractual requirements in respect of securities lending agreements; and
  - (i) counterparty limits.
- 4.2. Further to the above and on the basis of the comments received on the previous draft Notice, the FSCA updated the draft Conduct Standard amongst others to:
- (a) include the definition of an ‘exchange’ in the context of the Conduct Standard. This has been defined to mean a licensed exchange as defined in section 1 of the Financial Markets Act, 2012;
  - (b) clarify that the requirements in the draft Conduct Standard will be applicable to all securities irrespective of whether the securities are offshore or local;
  - (c) rectify in clause 11(4) the term borrower which was used to refer to a counterparty; and
  - (d) amend the definition of a securities lending arrangement to include other forms of securities and delete what used to be paragraph 7 which listed other forms of securities.

## 5 STATEMENT OF IMPACT OF THE DRAFT CONDUCT STANDARD

- 5.1 It is envisaged that the draft Conduct Standard will not have an adverse impact on pension funds. The draft Conduct Standard is likely to lead to improved outcomes as the conditions proposed are an attempt to reduce risk for the pension funds and its members.
- 5.2 The FSCA acknowledges that there may be instances in which the implementation of the draft Conduct Standard could have an impact on existing securities lending transactions. In recognising this, all stakeholders and commentators are requested to respond to the questions set out under **Part C** of the comments template published with this statement. The responses will be analysed to understand the anticipated cost and impact of implementing the draft Conduct Standard once it becomes effective. This includes the extent to which transitional provisions are required in respect of some of the requirements proposed in the draft Conduct Standard.

## 6 STATEMENT OF INTENDED OPERATION OF THE CONDUCT STANDARD

The draft Conduct Standard will become effective on the date of publication of the final Conduct Standard.

## 7 WAY FORWARD

- 7.1 After careful consideration of all submissions received on the draft Conduct Standard, the FSCA will make any necessary changes to the draft Conduct Standard and will submit the updated draft Conduct Standard to Parliament for a period of at least 30 days while Parliament is in session.<sup>2</sup>

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<sup>2</sup> Assuming no serious concerns emanate from the public consultation process.

- 7.2 Please note that this Statement may be updated before a submission to Parliament is made to better reflect the expected impact of the draft Conduct Standard based on the submissions received **under Part C** of the comment template.