

FSCA
Financial Sector Conduct Authority

GUIDANCE NOTICE 1 OF 2019 (PFA)

PENSION FUNDS ACT NO. 24 OF 1956
FINANCIAL SECTOR REGULATION ACT, 2017

**GUIDANCE NOTICE: SUSTAINABILITY OF INVESTMENTS AND ASSETS IN THE
CONTEXT OF A RETIREMENT FUND'S INVESTMENT POLICY STATEMENT**

1. PURPOSE OF THE GUIDANCE NOTICE

This purpose of this Guidance Notice is to provide guidance to boards of funds on how the board must comply with Regulation 28(2)(b) read with Regulation 28(2XcXix), in particular how its investment philosophy and objectives, as reflected in its investment policy statement, seeks to ensure the sustainability of its investments and assets, and to set out the Authority's expectations regarding disclosure and reporting on issues of sustainability.

2. DEFINITIONS

In this Guidance Notice "the Act" means the Pension Funds Act, 1956 (Act No. 24 of 1956), and "the Regulations" mean the Regulations made under the Act, and any word or expression to which a meaning is assigned in the Act or the Regulations bears the similar meaning so assigned to it, and unless the context indicates otherwise -

"active ownership" subject to section 19(5D) of the Act, means the prudent fulfilment of responsibilities relating to the ownership of, or an interest in, an asset. These responsibilities include, but are not limited to:

- (a) guidelines to be applied for the identification of sustainability concerns in that asset;
- (b) mechanisms of intervention and engagement with the responsible persons in respect of the asset when concerns have been identified and the means of escalation of activities as a holder or owner of that asset if these concerns cannot be resolved; and
- (c) voting at meetings of shareholders owners or holders of an asset, including the criteria that are used to reach voting decisions and the methodology for recording voting:

"broad-based black economic empowerment means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

"discretionary asset manager" means any person (whether natural or juristic) which manages assets and exercises its discretion over the investment into and the divestiture from those assets. In the South African context, it includes but is not limited to a discretionary FSP as defined in the Code of Conduct for Administrative and Discretionary FSP's made under section 15(1)(a) of the FAIS Act;

"ESG factors" means environmental, social and governance factors. In the South African context, and specifically in respect of assets located in South Africa, these factors include, but is not limited to, the manner in which broad based black economic empowerment is advanced;

"FAIS Act" means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);

"Financial Sector Regulation Act" means the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017);

"FSP" means an "authorised financial services provider" as defined in section 1 of the FAIS Act;

"sustainable reporting" means a report produced by an entity to inform stakeholders about its policies, programmes and performance regarding ESG factors;

"sustainability" means the ability of an entity to conduct its business in a manner that primarily meets existing needs without compromising the ability of future generations to meet their needs. Conducting business sustainably includes managing the interaction of the business with the environment, the society and the economy in which it operates towards a better long-term outcome. Evaluating the sustainability of the business of an entity includes the consideration of economic factors and ESG factors. The "sustainability of an asset" implies the sustainability of the entity giving rise to the underlying value of the asset. "Sustainable" has a meaning consistent with this; and

"website" means a website hosted by a fund, administrator or employer for the publication of fund information.

3. BACKGROUND

3.1 Regulation 28(2)(b) of the regulations to the Act requires all funds to have an investment policy statement and Regulation 28(2)(cXix) requires that boards of funds consider ESG factors before investing in an asset.

3.2 Regulation 28 promotes responsible investing of fund assets, based on a sustainable, long-term, risk aligned and liability-driven investment philosophy. The preamble to regulation 28 sets out the expectation on funds when they are investing their assets:

"Prudent investing should give appropriate consideration to any factor which may materially affect the sustainable long-term performance of a fund's assets, including factors of an environmental, social or governance character. This concept applies across all assets and categories of assets and should promote the interests of a fund in a stable and transparent environment."

3.3 This requirement to consider the sustainability of a fund's assets is repeated in the principle contained in regulation 28(2)(cXix), which states that a fund and its board must:

"before making an investment in and while invested in an asset consider any factor which may materially affect the sustainable long term performance of the asset including, but not limited to, those of an environmental, social and governance character."

3.4 This Guidance Notice provides guidance on some of the essential aspects of sustainable investments that the Authority would expect a fund to include in an investment policy statement in order to comply with Regulation 28(2)(b) read with Regulation 28(2)(c)(ix). This Guidance Notice also sets out the Authority's expectations regarding certain disclosure and reporting requirements relating to sustainability.

SUSTAINABILITY OF INVESTMENTS AND ASSETS IN THE CONTEXT OF A RETIREMENT FUND'S INVESTMENT POLICY STATEMENT

4.1 The sustainability of the assets of a fund is a key factor that should inform its investment policy statement. To this end, in order to comply with Regulation 28(2)(b) read with regulation 28(2)(c)(ix), a fund should reflect in its investment policy statement how its general investment philosophy and objectives seeks to ensure the sustainability of its assets, including (but not limited to) the following:

- (a) when the investment policy statement was approved and by whom;
- (b) how often the investment policy statement will be reviewed;
- (c) how the fund intends to monitor and evaluate the ongoing sustainability of the asset which it owns and which it is intending to acquire, including the extent to which ESG factors have been considered by the fund, and the potential impact thereof on the assets of the fund; and
- (d) its active ownership policy.

4.2 Where a fund holds assets that limit the application of ESG factors, sustainability criteria or the full application of an active ownership policy, the investment policy statement should also state the reasons as to why this limitation is to the advantage of both the pension fund and its membership. Alternatively, the investment policy statement should set out the remedial action the fund has taken or intends taking to rectify the position. Where no remedial action is being considered or taken, the fund should set out the reasons therefor.

4.3 The Authority would also expect a fund's investment policy to stipulate that the matters referred to in paragraph 4.1 will, to the extent applicable, be reflected in the relevant investment mandate(s).

5. DISCLOSURE AND PROVISION OF INFORMATION TO STAKEHOLDERS

5.1 In the interest of transparency, accountability and the fair treatment of its members, every fund is encouraged to -

- (a) make its investment policy statement or an abridged version thereof available on request and at no cost to each member and, if applicable, to each participating employer. Where an abridged investment policy statement is provided it would be acceptable if it only reflects those assets relating to the specific category of members, but the requirements of paragraph 4 in relation to those assets should preferably be contained in the abridged statement;

(b) make a copy of its investment policy statement, as well as information as set out in paragraph 4, available on the website. A fund's investment policy should be accessible to any person, whether or not a member, and

(c) at least on an annual basis, provide a copy of or inform stakeholders that the investment policy statement and any changes thereto is available on its website. Where there is a representative union in respect of the members of the fund as advised by the employers participating in the fund, such communication should preferably be addressed to the representative union,

5.2 The Authority encourages transparent disclosure by funds to stakeholders on all matters relating to sustainability.

6. REPORTING

6.1 In order for the Authority to monitor compliance with Regulation 28(2Xb) read with Regulation 28(2Xc)(ix), funds are requested to report on the extent to which its investment policy statement reflects the matters set out in this Guidance Notice.

6.2 In the interest of transparency, accountability and fair treatment of its members, the board of a fund is encouraged to adopt sustainable reporting practices and to include details of -

- (a) how its investment policy statement reflects the matters set out in this Guidance Notice;
- (b) any significant changes in its investment policy statement during the reporting period, specifically including any changes relating to matters addressed in paragraph 4; by note in the Report by the Board of the Fund in the prescribed annual financial statements referred to in section 15(1) of the Act as well as in its annual report to members or in any other appropriate communication to its members.

6.3 It would be prudent for the board of a fund to include the following information, where possible, by note in the financial statements -

- (a) confirmation that every member who has requested a copy of the investment policy statement has been provided with such a copy;
- (b) confirmation of any change to the investment policy statement from the previous year, including specifically any changes relating to matters set out in paragraph 4;
- (c) assets held in compliance with this Guidance Notice and the class of the asset as per Annexure B to Schedule of the prescribed financial statements; and
- (d) value of assets held in compliance with this Guidance Notice.

[signed]

CD DA SILVA
DIVISIONAL EXECUTIVE: REGULATORY POLICY
FINANCIAL SECTOR CONDUCT AUTHORITY

Date of publication: 14 June 2019