



PFA NOTICE NO. 2 OF 2019

PENSION FUNDS ACT, 1956

**GENERAL EXEMPTION FROM REGULATION 39(3)(a) MADE IN TERMS OF
SECTION 36 OF THE PENSION FUNDS ACT, 1956**

The Financial Sector Conduct Authority, under regulation 39(6) of the Pension Funds Act, 1956 read with section 281(3)(b) of the Financial Sector Regulation Act, 2017, hereby exempts retirement funds from the provisions of regulation 39(3)(a), to the extent and on the conditions set out in the Schedule.

OLANO MAKHUBELA
DIVISIONAL EXECUTIVE: RETIREMENT FUNDS SUPERVISION
FOR THE FINANCIAL SECTOR CONDUCT AUTHORITY

DATE OF NOTICE: 20 February 2019

SCHEDULE

1. Definitions

In this notice:

“Act” means the Pension Funds Act, 1956 (Act 24 of 1956);

“Authority” means the Financial Sector Conduct Authority as defined in section 1(1) of the FSR Act;

“Default Regulations” means regulations 37, 38, 39 and 40;

“FSR Act” means the Financial Sector Regulation Act, 2017 (Act 9 of 2017);

“regulations” means the regulations made in terms of section 36 of the Act.

Words defined in the Act, regulations or the FSR Act bear the same meaning in this notice unless the context indicates otherwise.

2. Introduction

(1) The default regulations come into full effect on 1 March 2019.

(2) Regulation 39(3)(a) provides that a living annuity may form part of a fund’s preferred annuity strategy, provided that the investment choice in respect of the living annuity is limited to a maximum of four investment portfolios, which portfolios must be compliant with regulations 28 and 37 and drawdown levels must be compliant with a prescribed standard.

(3) In this regard, on 7 November 2018 the Authority issued a draft conduct standard on the criteria for living annuities, which prescribes drawdown levels for living annuities in a preferred annuity strategy. Public comment was invited in terms of section 98(1)(a)(iv) of the FSR Act.

- (4) The Authority received extensive comments from the public and is carefully considering them with a view to determine whether it is necessary to make changes to the draft standard before the standards-making process is completed.
- (5) It is not anticipated that the final conduct standard will be published before 1 March 2019, given the new and extensive standard-making process required by the FSR Act.

3. **Purpose**

This exemption is intended to exempt funds from the requirement to comply with regulation 39(3)(a), subject to the conditions below, until the final living annuities conduct standard, which will contain the prescribed drawdown levels, is published.

4. **Exemption from the default regulations**

After considering whether granting the exemption –

- (1) will be contrary to the public interest; or
- (2) may prejudice the achievement of the objects of the default regulations;

the Authority hereby grants a general exemption to funds from the provisions of regulation 39(3)(a) on the conditions set out below.

5. **Extent of exemption and conditions**

- (1) This exemption is granted to funds that intend including living annuities in their annuity strategy and is subject to the following conditions -
 - (a) The investment choice for living annuities is limited to four investment portfolios which are compliant with regulations 28 and 37; and

- (b) Until such time as the drawdown levels for living annuities are prescribed, the board of a fund is expected to exercise its fiduciary duty in determining the drawdown levels by taking into account the particular nature of the fund and circumstances of their membership. The drawdown levels cannot, at any time, exceed those prescribed for living annuities in terms of the Income Tax Act, 1962.

6. Amendment and withdrawal of exemption

- (1) The Authority may amend or withdraw this exemption by notice published on the Authority's website.
- (2) This exemption automatically lapses once the Authority publishes the living annuities standard as envisaged by regulation 39(3)(a).

7. Short title and commencement

This exemption is called the "*General Exemption from Regulation 39(3)(a)*" and comes into operation on the date of publication.