

FINAL REGULATION 28 EXPLANATORY MEMORANDUM

as being prudentially regulated, can be held at the maximum (75 percent) if that debt is listed,² while listed debt issued by listed corporates and public entities can be held at a lower maximum of 50 percent, and listed debt of unlisted entities at 25 percent. Stricter limits apply across each of these issuer sub-categories for unlisted debt instruments. This recognises the pricing, liquidity and disclosure advantages of listed over unlisted debt.

Funds are not required to apply credit ratings in assessing credit risk. Where ratings are used, such should form part of a broader due diligence and should not be relied upon in isolation.

3.4 EQUITIES

Equities as an asset class is narrowly defined to include only preference and ordinary shares in companies. The overall limit of 75 percent is retained, subject also to per-issuer limits divided into three categories – small (5 percent), medium (10 percent) and large (15 percent). The limits will be checked for inflationary pressures over time and the Financial Services Board is enabled to update these accordingly. The limit for unlisted equities, whether held directly or through a private equity vehicle, is increased to 15 percent, subject to strict investment diversification and valuation requirements.

3.5 IMMOVABLE PROPERTY

As unlisted property may have significantly different risk management implications and risk profile from investing through a listed property vehicle, regulatory treatment distinguishes between listed (25 percent) and unlisted (15 percent) property exposure. Similar to equities, listed property is divided into three sub-categories – small (5 percent), medium (10 percent) and large (15 percent). The market capitalisation limits differ from that of equities to reflect the different structure of the listed property landscape.

Over time the limits will be checked and tested by the Registrar of Retirement Funds, and may be updated accordingly.

Debt instruments backed by property are now classified as debt rather than property, as these better reflect the characteristics of that asset class.

3.6 COMMODITIES

In recognition of hedging potential, a fund can invest in listed commodities of up to 10 percent in gold, or up to 5 percent in other commodities (up to a combined maximum across all commodities of 10 percent).

3.7 OTHER ASSETS AND ALTERNATIVE INVESTMENTS

Hedge funds and private equity funds are defined. If read together with the look-through principle and anti-avoidance clause, the new Regulation

² The raised limit on bank issued debt should ease structural funding challenges faced by the banks that may be caused by the prevailing Regulation 28.

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prevents these products from being reported as the linking structure (for example a debenture issued against private equity fund cash flows). Instead the hedge fund or private equity fund must be disclosed as such.

Definitions provide guidance to the investment activities of these vehicles, and require that managers be registered under the relevant categories of the Financial Advisory and Intermediary Services Act of 2002 (FAIS). Given the particularly broad activity definition for hedge funds, the FAIS requirement gives added protection that products being disclosed as hedge funds are in fact hedge funds, and not some other product being "wrapped" in a hedge fund guise.

Accessing hedge funds or private equity funds through a fund of funds structure provides a valuable extra layer of due diligence and built-in diversification. Consequently the allowance per fund of hedge funds and fund of private equity funds is 5 percent (compared to 2,5 percent for investment into individual funds).

Provision is made for the Registrar of Retirement Funds to impose additional requirements to investments made through a partnership or trust structure. The Registrar is expected to also impose valuation standards informed by international best practice.

3.8 HOUSING LOANS

The December 2010 draft provided that housing loans issued directly by the fund should be curtailed to 5 percent of a member's accumulated retirement savings, compared to the prevailing 95 percent. Housing loans could still be obtained from a bank using a member's retirement fund savings as surety. This change in approach has been removed. While abuses are observed in the issuing of these loans, the National Treasury agrees that the December proposal exposed the fund to considerable risk. The existing regulatory treatment should therefore prevail.

3.9 FOREIGN ASSETS AND REGIONAL DEVELOPMENT

Foreign assets are currently defined in terms of the South African Reserve Bank's Financial Surveillance Department regulation and requirements. Regulation 28 therefore references this authority.

The concept of a "recognised foreign exchange" as contained in earlier drafts of the Regulation falls away, being incorporated into the definition of "exchange". To be considered as "listed" for the purposes of Regulation 28, a security must be listed on an exchange that is a full member of the World Federation of Exchanges (WFE). In addition, a registered Collective Investment Scheme holding foreign assets on an exchange that satisfies due diligence performed by the manager in terms of guidelines set by the Registrar of Collective Investment Schemes, likewise satisfies the definition. This latter allowance supports exposure by retirement funds to African and other foreign assets through a suitably regulated vehicle. Regional investment is further supported through the higher limits placed on unlisted

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debt and (directly held) unlisted equity (of 15 and 10 percent, respectively), as this is where securities listed on foreign exchanges that are not WFE members are accommodated. Lastly, it is noted that inward or dual listed securities on a South African exchange will be treated as "listed" for prudential purposes, and therefore be subject to up to the 75 and 50 percent limits for equities and debt respectively (although will of course remain subject to relevant foreign exposure limits). Through this channel, non-South African companies and foreign governments can access significantly more South African capital, and should support building South Africa as a regional financial centre and Gateway to Africa.

4. LOOK-THROUGH

In the past, asset managers would often hold more risky assets such as hedge funds through product wrappers, which would for instance reflect on Regulation 28 disclosure documents simply as "unlisted debenture" under the 25 percent allowance. To deal with this challenge of not seeing the real economic exposure of certain assets to a fund, the look-through principle provides that a fund cannot use an asset structure to circumvent the limits, and must "look-through" the linking structure to disclose the underlying assets.³

An exception however is made for private equity funds and hedge funds, where these vehicles themselves are seen in terms of Regulation 28 as the "final" asset, and must be reported as such – in other words no further look-through applies (this means that hedge funds will not be subject to derivatives requirements, and listed equity held by a private equity fund will be classified as unlisted for the purposes of Regulation 28). Tight definitions of hedge and private equity funds seek to ensure that the exemption of look-through is not abused, resulting in these vehicles being used to circumvent limits under the Regulation.

To alleviate extensive disclosure requirements, a *de minimis* rule is applied – if an asset comprises less than 5 percent of the aggregate fair value of the assets of the fund, then the fund need only disclose the categories of underlying assets making up the investment, and not each underlying asset.

5. BORROWING

Because of the risks involved, the Regulation is clear that funds should never borrow for the purposes of investing that borrowed money. The only time a retirement fund should be allowed to borrow money is when it runs into liquidity issues and needs cash to distribute to members leaving the fund. Even then, this borrowing should be limited in value, time constrained, and

³ The Registrar of Retirement Funds will in addition require the disclosure of asset exposure obtained through the linking structure. Consider for example an exchange traded note linked to an underlying commodity asset. Applying the look-through principle requires reporting of the commodity exposure under Regulation 28 limits, but the credit risk associated by the issuer of the note is also relevant and will need to be disclosed to the Registrar for monitoring.

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stay away from exploitative and/or inappropriate loan covenants, especially with regards to early settlement penalties or collateral arrangements.

6. REPORTING, EXCLUSIONS AND EXEMPTIONS

Not all investments of a fund need to be included in the calculation of the percentage limits. Some investments may be excluded on the grounds that they themselves comply with the Regulation. More specifically, collective investment schemes, linked insurance policies, and guaranteed long-term insurance policies may be excluded in this way.

To promote competition and improve the service offering to retirement funds, an entity that is regulated by the Financial Services Board and offers a Regulation 28 compliant product (like an investment fund managed by a FAIS registered manager), can now be similarly excluded from Regulation 28 limit calculations.

Funds may also apply to the Registrar for exemption from certain provisions of the Regulation for a certain time and with regards to certain limits.

It is important to reiterate that in its investment decision making, a fund should be driven by what is best for the fund, which in some instances may differ from limits imposed by Regulation 28. Where this is the case, funds are encouraged to engage with the Registrar of Retirement Funds to explore the possibility of obtaining exemption from certain limits should these become inappropriate. The National Treasury and the Financial Services Board will monitor the take-up of the new limits over time, to assess their ongoing suitability.

7. IMPLEMENTATION OF THE REGULATION

The Regulation will be effective from 1 July 2011. While certain funds may not be able to comply fully with the Regulation at that time, earlier implementation is intended to give funds the space to begin re-equilibrating to the new, more flexible limits. Those funds that do not expect to meet the compliance deadline should apply to the Registrar before 31 May 2011. Exemption may be granted on the basis that the fund can prove its path towards compliance.

It should be noted that only individual retirement policy contracts entered into before 1 April 2011 will be exempt in terms of the grandfathering clause. It is therefore emphasised that no additional policies that are not Regulation 28 compliant should be sold, as irrespective of any contractual arrangement entered into these will be required to be compliant as at 31 July 2011.

Industry participants are also warned against exploiting the grandfathering provisions to evade Regulation 28 – behaviour will be monitored and the grandfathering provisions will be removed should abuses be observed.

To further support stakeholder understanding of the intention and principles underpinning the final Regulation 28, the National Treasury and the Financial Services Board will host two public forums during March 2011. The purpose of these forums is to ensure that retirement fund and ancillary stakeholders are aware of their responsibilities under the new Regulation 28.

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Notices and the guidance note on the treatment of securities lending, derivatives and part-guaranteed insurance policies will be drafted by the Financial Services Board in consultation with the National Treasury, and will be subject to stakeholder engagement. These, as well as a Guidance Note issued by the Registrar of Retirement Funds on hedge funds and private equity valuation, are expected to be finalised by 31 March 2011. A Notice on the appropriate use of credit ratings issued by credit rating agencies will be finalised at a later stage, following from the implementation of regulation of those entities.

VI. CONCLUSION

The revised Regulation 28 is considered rigorous, flexible and fair, attempting to promote transparency in those areas where rules have traditionally been circumvented, but also allowing for some level of innovative financial strategies and instruments where appropriate.

The National Treasury remains informed by international best-practice in this area, while being sensitive to South Africa's local context. Stakeholder representations have been extensively considered and tested against our financial sector policy objectives of member protection, sector stability and efficiency, as well as broader objectives of channelling savings for investment to promote economic growth and support ESG considerations.

The National Treasury is sensitive to the fact that the new Regulation 28 may pose significant challenges to some retirement funds in terms of achieving compliance, as these funds may be operating widely outside of the proposed asset class limits. Even for those retirement funds that are broadly compliant with the existing Regulation, a tighter approach in instances like member-level compliance, part-guaranteed policies and unlisted debt may require a period of adjustment. Retirement funds should engage the Registrar of Retirement Funds in this regard.

The National Treasury and Financial Services Board thank all stakeholders for their open and constructive engagement on this Regulation.

REGULATION 28 COMMENTS ON SECOND DRAFT – RESPONDENTS

ENTITY
ABSA Capital
ABSIP
Actuarial Society of South Africa (ASSA)
Alexander Forbes Financial Services (Pty) Ltd
Anton Kleinschmidt
ASISA
Brait
Capricorn Fund Managers (Pty) Ltd
Coronation Fund Managers
Fedgroup
Fifth Quadrant Actuaries & Consultants (Pty) Ltd
FPI (Financial Planning Institute of Southern Africa)
George W Nicholas
Investec Asset Management
Investec Bank Limited
Investment Data Services Group (Pty) Ltd (IDS)
IRF (Institute of Retirement Funds)
JSE
Leonard Roberts
Malcolm McClean
Mergence Investment Managers (Pty) Ltd
Mezzanine Partners
Mine Employees Pension Fund (MPF)
Novare Investments
Oasis Group Holdings (Pty) Ltd
Price Waterhouse Coopers
Public Investment Corporation (PIC)
Riscura
Sagree Naicker
SAVCA
Standard Bank
Tennant Benefit Consultants (Pty) Ltd

REGULATION 28 COMMENTS ON SECOND DRAFT – COMMENTS

REG	WORDING/PROPOSED WORDING	COMMENT
General		Instead of focusing on limits which may be regarded as "safe" or low risk, recognise the variety of risks to which retirement funds are exposed and foster a culture amongst fiduciaries (Trustees) to properly manage these risks, while at the same time allowing them sufficient flexibility to do so.
Pre-amble	A fund and its agents have a fiduciary duty to act in the full best interests of those for whose assets they are responsible. This duty supports the adoption of a responsible investment approach to deploying capital into markets that will earn them adequate risk adjusted returns. Prudent investing should give appropriate consideration to any factor which may materially affect the sustainable long term performance of their investments, including those of an environmental, social and governance character. This applies across all asset classes and should promote the vested interest the Fund has in a stable and transparent environment.	The reference to "and its agents" should be deleted. The inclusion thereof may imply that trustees of retirement funds can delegate their responsibility to agents when in fact the retirement fund remains responsible even though it appoints advising agents or other agents to fulfil functions on its behalf.
28 (1) Principles		Provide consistency in terms of the points ending in a either semi-colons or full-stops but not a mixture. Require retirement funds to develop and implement an investment strategy and policy which should be reviewed annually. Apply look through to hedge funds and private equity funds, otherwise it gives a way and means for such funds to bypass the regulation and possibly invest pension assets in an imprudent and overly risky way. That hedge fund provides can now do what they wish without worrying about reg28 limits is deeply concerning and creates a whole new area of possible abuse and arbitrage between different investment structures that wasn't in regulation before.
28(1)(a)	A fund must have an investment policy statement, being a document which describes the fund's general investment philosophy and approach and which addresses the principles referred to in (1)(b).	Define the term "investment policy statement". Require that an IPS should include a number of risk and investment principles, have clear guidelines and be enforceable. Define or cross reference "investment policy statement" in a way that clarifies what the investment policy statement must do and what its purpose is. No content or purpose for the investment policy statement is provided by clause (1)(a). If all the content is provided for by sub-clause (b) then the drafting should reflect that.

28(1)(b)	<p>A fund, its advisors and its trustees must at all times apply the following principles:-</p> <p>CURRENT WORDING: "A fund, its advisors and its trustees must at all times ..."</p> <p>SUGGESTED WORDING: "A fund must at all times ..."</p> <p>[A minority view was that there is no harm in advisors being included here.]</p> <p>It is proposed that the use of the word "must" should be deleted and replaced with "shall". It is suggested that this be done consistently throughout the Regulation (i.e. a global delete and replace).</p> <p>(b) A fund, its advisors and its trustees must shall at all times apply the following principles:-</p>	<p>Add principle to clarify that fund cannot delegate its responsibility and such third parties should not be required to for example promote the education of trustees.</p> <p>Advisors are covered by other legislation which may conflict.</p>
28(1)(b)(i)	<p>comply with the spirit of this regulation and not try to circumvent this regulation;</p> <p>CURRENT WORDING: "comply with the spirit of this regulation and not try to circumvent this regulation"</p> <p>SUGGESTED WORDING: "invest with prudence and care, balancing the need for investment returns with appropriate risk management"</p>	<p>Delete this principle. From a jurisprudential perspective this wording is flawed as it assumes that the subjects of the legislation have perfect insight to the spirit of the legislation. This attempts to superimpose a new and overriding principle of interpretation of statutes on existing laws (common and other). It is also highly irregular in legislation.</p> <p>Impossible for the reader to know "the spirit" of any regulation.</p> <p>Anti-avoidance is already sufficiently covered in 2(c).</p> <p>Remove this clause or change wording that aligns itself to prudent investment since "spirit" is not well defined in law</p>
28(1)(b)(iii)		<p>Allow for an exemption from this principle for a fund with a well formulated investment policy, especially for larger Funds that do not require immediate liquidity for asset bases of over R10 billion, broad membership bases and cash flows going out 50 years. In these cases, appropriate asset liability studies will potentially show the Regulation proposals leading to sub-optimal investment strategies that distinctly act against member interest. It would lend itself to the idea that the Regulation requires a rewrite to be in line with asset vs. liability principles.</p>
28(1)(b)(iv)	<p>ensure that the fund's assets, including foreign assets, are appropriate for its liabilities;</p>	<p>Delete "including foreign assets" and rephrase as it is superfluous</p>

28(1)(b)(v)	<p>before making <u>a commitment to invest in a third party managed fund or</u> an investment into and while invested in an asset perform reasonable due diligence taking into account risks relevant to the investment including but not limited to credit, market and liquidity risks.</p> <p>before making <u>a commitment to an investment fund managed by a third party, or before making</u> an investment into and while invested in an asset, perform reasonable due diligence taking into account risks relevant to the investment including but not limited to credit, market and liquidity risks.</p>	<p>Clarify the standards for "reasonable due diligence".</p> <p>Clarify that in the case of a private equity fund the investor is no longer involved in the decision to invest in any underlying investment and consequently it would not be involved in the due diligence of the underlying investment.</p> <p>Explicitly recognise that some funds (including, without limitation, hedge funds, private equity and even some debt/credit funds) do not have cash invested in them by their investors up-front. Rather, investors make a <i>commitment</i> to the fund, and the third party manager then makes all investment decisions, and can drawdown on the pension or retirement funds' commitments as and when the manager identifies investments which it wants to make.</p>
28(1)(b)(vi)	<p>before making <u>a commitment to an investment fund managed by a third party, or before making</u> an investment into and while invested in a foreign asset, perform reasonable due diligence taking into account risks relevant to a foreign asset including but not limited to currency and country risk, and operational risk for foreign assets in unlisted equity made in the name of the fund or through a private equity fund or private equity fund of funds.</p>	<p>Provide guidance in terms of this principle, in understanding how Trustees should treat the ratings of RSA government debt, and indeed even SA banking debt. Should this be in line with in line with local or worldwide ratings? If so, does this impact inclusion in the portfolio?</p>
28(1)(b)(vii)	<p>in performing the due diligence referred to in (v) and (vi), funds may <u>use</u> take ratings issued by a recognised credit rating agency <u>into account</u>, but such ratings should not be relied on in isolation for risk assessment or analysis of an asset.</p> <p>in performing the due diligence referred to in (v) and (vi), funds may <u>use</u> <u>have regard to</u> ratings issued by a recognised rating agency, but such ratings should not be relied on in isolation for risk assessment or analysis of an asset <u>and use of such ratings shall in no way relieve funds, their advisors and trustees from their obligations to comply with all the principles set out in paragraph 1 of regulation 28.</u></p>	<p>Replace the reference to "use" be replaced with "take into account" to further illustrate that a fund should not rely solely on credit ratings</p> <p>Explicitly recognise that the clause is applicable to funds and their service providers, and not only to funds.</p> <p>Clarify what is meant by the word "use", and caveat the fact that such "use" of credit ratings will not relieve the relevant parties' of their obligations to comply with all the other key Principles set out in Paragraph 1 of Regulation 28.</p>

28(1)(b)(viii)	<p>in the formulation and consideration of the investment policy statement before making an investments into and while invested in an asset consider any factor which may materially affect the sustainable long term performance of the investments of the fund, including but not limited to those of an environmental, social and governance character.</p> <p>before making an investment into and while invested in an asset consider any factor which may materially affect the sustainable long term performance of the investment, including but not limited to those of an environmental, social and governance character.</p>	<p>Rephrase not to focus should on single assets as one size will not fit all retirement funds and many investment processes do not explicitly consider all of these factors. A retirement fund may decide to follow an index tracking strategy and will simply hold the constituents of the index</p> <p>This paragraph needs to clarify that the use of the words "including" will not have a restrictive impact on the interpretation of this part of regulation 28. Use of the words "but not limited to" is consistent with the wording already applied in draft Regulation 28(i)(b)(vi) of the DGN.</p>
28(1)(c)	<p>While the fund may appoint third parties to perform functions which are required to be performed in order to comply with the principles in (b), the fund retains the responsibility for compliance with such principles.</p>	
28(2)(a)	<p>Reword 2(a) as "...Column 2 of Table 1 with respect to such an asset."</p>	<p>Consider imposing a more onerous requirement that the asset managers must have pre-trade analysis systems that will not allow breaches of these limits and compliance systems that monitor and report on breaches. The trustees would then not need to monitor this continuously, but instead would just need to ensure that the managers are doing this and reporting back adequately.</p> <p>We agree with the principle of Regulation 28 compliance throughout the period, however, we suggest that greater clarity be provided to funds and administrators on how to ensure compliance as well as how it will be monitored by the Registrar.</p>

28(2)(b)	<p>Where –</p> <p>(i) a fund provides an individual member or class of members with investment returns related to a portion of the total assets of the fund, subject to (ii) that portion of assets must throughout the reporting period comply with this regulation 28 and the distribution of assets referred to in Table 1; and</p> <p>(ii) an individual member selects his or her own a portion of a portfolio of assets in the fund after 1 March 2011, that portion need only comply with this regulation whenever an selection is made after dd Month yyyy.</p> <p>The wording appears contradictory. We recommend that the Registrar provide clarity as to whether it is the intention of the regulations, to have different compliance requirements; based on the provision of the return on the assets by a fund and the individual member election.</p>	<p>Qualify that paragraph 2(b) is subject to paragraph 5(a). A fund should not be required to chase after members but rather a fund should act when contact is initiated by the member.</p> <p>Have time limit, not ad-infinity grandfathering from administrative cost perspective.</p>
28(2)(b)(i)		<p>Consider either allowing 100% equity for members or allow a comprehensive asset liability model to allow breach or exclusion of the Regulation or allow the average of all membership group portfolios within a Fund to comply.</p> <p>Require quarterly or even monthly testing of compliance as at quarter/ month end. Allow this quarterly/monthly testing to be done based on the Regulation 28 compliance status as at the prior year end (e.g. a CIS that was Regulation 28 compliant may be assumed to still be compliant).</p>
28(2)(b)(ii)	<p>SUGGESTED WORDING: "notwithstanding the requirement in (i), where an individual member elects his or her own portion of assets, that portion need only comply whenever an election is made on or after 1 March 2011."</p> <p>"Where - an individual member elects his or her own assets, portfolio of assets, or portion of assets to invest, those assets so elected must comply with this regulation."</p>	<p>Clarity required with respect to member level compliance.</p> <p>Clarify, reword or expand. If the intention is to allow market price drift not to be corrected at member level, this removes the protection offered by these limits.</p>
28(2)(b)(v)		<p>Clarify intention of the word "reasonable" in (v) and (vi) in terms of the requirement of trustees and certain advisors to perform due diligence. The trustees should be checking that specialists are performing the due diligence</p>

28(2)(b)(vi)		<p>Clarify whether the comments around private equity apply to local investments also.</p> <p>Confirm whether the comments around foreign investments apply more generally than just private equity.</p> <p>Separate these issues out i.e. let point (vi) discuss foreign investments, and create a new point to discuss private equity funds only.</p>
28(2)(b)(viii)		<p>Be explicit about SRI, requiring the evaluation of companies and engagement where appropriate to induce change where necessary. It should promote social responsible behaviour by all market participants (companies' employees and shareholders, as well as trustees and their advisors).</p>
28(2)(c) – (e)	<p>CURRENT WORDING: "A fund must not utilise any asset to circumvent the limits as set out in this regulation and it must include and disclose the underlying assets in the item or category in Table 1 to which the true nature of the underlying assets relate and not to the legal form to which the investment relates."</p> <p>SUGGESTED WORDING: Move to before 5(a): May want to include the example of an equity-linked note or other bank-wrapped investment which could count as both debt and equity?</p>	<p>Move clauses 2c and d to 28 (5) as these clauses relate to look-through.</p> <p>Increase 5% limit for collective investment schemes approved by the FSB to 10% as CIS safer than HF or PE.</p> <p>Clarify whether de minimis will apply to indirect exposure to foreign assets given that info on foreign assets often not readily available.</p>
28(2)(c)		<p>Clarify.</p> <p>Evaluate exposure to counterparties and disclose exposure both on the instrument (e.g. individual debt instruments, insurer policy) and portfolio (e.g. CIS) level.</p> <p>Clarify and/or reword to specifically prohibit a fund from investing 72% in equities (for example) and then has hedge fund exposure to equities of 8% if it is not actually permitted to invest in one asset class and then when applying look through exceed the total exposure to any other asset class listed in the regulation.</p>

28(2)(d)	<p>SUGGESTED WORDING: Move to before 5(e): "Despite (c), where the fair value of investments in a collective investment scheme comprises less than 5% of the aggregate fair value of the fund, then that investment may be deemed to be an asset with the same characteristics as the collective investment scheme's main underlying asset and no further lookthrough applies. No more than 25% of the aggregate fair value of the fund may be exempted in this way."</p> <p>Reword "... 5% of the aggregate fair value of the assets of the fund ..."</p> <p>Move clause 2(d) to before 5(e) and amend as follows: "Despite (c), where the fair value of an investment comprises less than 5% of the aggregate fair value of the fund, that investment may be deemed to be an asset with the same characteristics as the investment's main underlying asset."</p>	<p>Clarify <i>de minimis</i> clause. Should only apply to small investments and not to investments that have small exposures to certain assets. In other words, don't block look-through on an investment consisting of 96% in a single share and 4% in cash.</p> <p>Clarify explicitly reporting requirements and purpose of <i>de minimis</i> rule.</p> <p>Move this clause to Clause 5.</p> <p>Clarify the wording and application. The way it is currently worded could allow significant investments to escape the look-through provisions which we believe is not the intention. We believe that the rule should only allow small individual (as a percentage of Fund) investments to avoid the look-through provisions. Furthermore we suggest that there should be a maximum percentage of a Fund's assets that could be exempted from the look-through provisions using this rule (we propose 10% of Fund).</p> <p>Remove or redraft this clause. The 5% breach relaxation of other assets appears arbitrary. Additionally, if this is in fact a derivative instrument, a derivative of only 5% can change a cash portfolio into an equity portfolio and this will not be recognised in a 'fair-value' calculation, which would disregard the importance of the 5% asset. Theoretically one could also include many of the assets at 5% and still have another asset overwhelm the definition.</p> <p>In order to expedite the submission of Regulation 28 reports and ease the administration burden for certain smaller funds, we recommend that the Registrar considering increasing the limit as to which no further look through applies from 5% to 10%.</p>
28(2)(e)	<p>CURRENT WORDING:</p> <p>A fund may invest in an investment fund that is not registered and regulated as a fund by the Financial Services Board, including a hedge fund and a private equity fund, but such investment by the fund may not comprise more than 10% of the investment fund's total assets.</p>	<p>Delete this as retirement funds typically require tailored hedge fund solutions to match their particular needs. As a result, the retirement fund may hold 100% of the bespoke fund of hedge fund portfolio. The safeguards in the FAIS should suffice.</p> <p>Delete as it is impossible for Funds to know in advance what percentage of a CIS their investment will ultimately make up and they also have no control over this.</p> <p>This concern is better dealt with by specifying a limit on investment in unregulated and unregistered CIS.</p> <p>Allow investment in an offshore CIS that is not registered or regulated by the FSB subject to the Fund being registered and regulated in the offshore jurisdiction which the FSB is comfortable with. By not allowing this freedom, the regulation will severely restrict the range of CIS that Funds can invest in offshore. We would propose an aggregate maximum of 25% with a limit of 10% in any individual unregulated and unregistered CIS.</p> <p>Remove the 10% limit and replace with a similar obligation to that set out in (1)(b)(vi), but include mention of reference to track record of the manager and its key individuals.</p>

<p>28(2)(e) (cont)</p>	<p>SUGGESTED WORDING: Move to before 5(e): "A fund may invest in collective investment schemes that are not registered with the Financial Services Board, including hedge funds, private equity funds and unregistered foreign funds, but such investment may not comprise more than 35% of the collective investment scheme's total assets."</p> <p>The wording should be changed to be consistent throughout the document in reflecting that the limit is in relation to the "aggregate fair value of the assets of the fund", instead of referring to the "investment fund's total assets". The current wording may even be circular if it is referring to the limit as being 10% of the investment fund (which is the private equity or hedge fund).</p> <p>Move to before 5(e): "A fund may invest in collective investment schemes that are not authorised by the Financial Services Board, including hedge funds, private equity funds and unregistered foreign funds, but such investment may not comprise more than 35% of the collective investment scheme's total assets."</p>	<p>If 10% limit is a proportion of the unregistered scheme, then 35% would be in line with majority rules in the Companies Act.</p> <p>Clarify whether this would allow the trustees to "diversify" the assets between 10 unregulated managers of choice for whatever reason and so attract undue institutional risk for the members. Clarify also whether the 10% exemption is not applied to circumvent section 15B but to complement it. In the event of such interpretation it should still be limited to accumulatively 10% of the retirement fund's total assets.</p> <p>Increase limit to 35% if this is about where a fund invests in an unregistered scheme, the 10% limit is a proportion of the unregistered scheme and not of the fund. 35% would be in line with the majority rules in the Companies Act. The 10% limit is unduly restrictive and makes no investment sense.</p> <p>Do not apply this provision to foreign collective investment schemes, the majority of which are not registered with the FSB for marketing in SA.</p> <p>Revise upwards. If intention is to say that a retirement fund can invest max 10% of its assets in PE or HF. This will still leave dilution into the three categories (HF, PE, 'other assets') from their individual caps, but at least means there is no floor (15%-10% = 5%) for 'other assets'. A greater than 10% should be allowed to avoid forced sales and to promote private equity style fund raising which often happens in stages.</p>
<p>28(2)(f)</p>	<p>A fund must may not invest in an investment fund, including a hedge fund or private equity fund, where there is a potential of a fund may suffer a loss to the fund in excess of the fund's investment into such asset investment fund.</p> <p>Clarify by changing last line to "... in excess of the funds investments or committed capital into such asset investment fund".</p> <p>SUGGESTED WORDING: "A fund must not invest in a collective investment scheme, including a hedge fund or private equity fund, where there is a potential of loss to the fund in excess of the fund's investment into such asset."</p> <p>New wording: "A fund may not invest into any portfolio or in any manner, which may result in a loss of more than the amount originally invested."</p>	<p>Rephrase to clarify.</p> <p>The term "investment fund" is not defined and seems to be redundant.</p> <p>Remove or deal with contradiction in that this clause disallows leverage and net short positions, but the rest of the regulation and the definition of hedge fund allows leverage and net short positions.</p>