

28(2)(g)	<p>The categories or kinds of assets referred to under the following items of Table 1 must be calculated at fair value for reporting purposes and the aggregate sum of exposure of to assets referred to in these items may not exceed 30% of the aggregate fair value of the total assets of a fund:</p> <p>(i) item 2(d)(i) 2.1(e)(ii) Other debt instruments not listed on an exchange; (ii) item 3.1(b) Preference and ordinary shares in companies, excluding shares in property companies, not listed on an exchange; (iii) item 4.1(b) Immovable property and claims secured by mortgage bonds thereon, as well as property shares in property companies not listed on an exchange, secured loans and debentures not listed on an exchange; and (iv) item 8. Hedge funds, private equity funds and any other asset not referred to in this schedule.</p> <p>SUGGESTED WORDING: "(i) item 2(e)(ii) Other debt instruments not listed on an exchange; (ii) item 3(b) Preference and ordinary shares in companies, excluding shares in property companies, not listed on an exchange; (iii) item 4(b) Immovable property and claims secured by mortgage bonds thereon, as well as property shares, secured loans and debentures not listed on an exchange; and (iv) item 8 Hedge funds, private equity funds and any other asset not referred to in this schedule."</p> <p>Change "total assets" to "total assets of the fund".</p> <p>Add "of the fund" after the words "fair value of the total assets" ie: fair value of the total assets of the fund.</p> <p>"... may not exceed 40%"</p>	<p>Clarify whether 30% limit applies to the aggregate of unlisted debt, unlisted equity, unlisted property and alternative investments. If so, remove unlisted debt from this limit, given that it is inherently less risky than the others and generally self liquidating.</p> <p>Lower the overall limit, if only for DC funds, for unlisted instruments, hedge funds and private equity funds as these instruments are generally very illiquid. This may create a cross subsidy between generations of members entering and exiting the funds as these instruments will not have visible market values and prices could become quite stale.</p> <p>Impose restrictions for funds that have member choice.</p> <p>Require that funds investing a high proportion in these assets explain how they are dealing with the problems listed here to ensure they are appropriate for the fund.</p> <p>Consider a requirement to take expert advice from an independent specialist in this field as well as an independent legal review of all documentation by a legal expert when investing in the assets listed in this clause.</p> <p>Expand the overall limit under Clause 2 (g) to 40% or remove unlisted debt from this list of assets.</p> <p>Retain a limit of 30% for "illiquid assets" in the Fund, but exclude hedge funds from this definition.</p> <p>Leave the grouping as is, but increase the limit to 40%.</p> <p>Contemplate true measures and restrictions of liquidity for all assets in the portfolio given the liability structure.</p> <p>Clarify whether the 30% limit applies to the aggregate of unlisted debt, unlisted equity, unlisted property and alternative investments – the wording is not clear. If this is the intention, then our April 2010 proposal was for this to be 40%. A 30% limit is unnecessarily restrictive given the diversified and in many respects unrelated nature and investment characteristics of the included investments.</p>
28 (2) (g)(i)	<p>The wording in the paragraph should cross reference to item 2 (e) (ii) Other debt instruments not listed on an exchange.</p>	<p>This section makes a reference to section 2 (d) (1) of Table 1, this reference should not be to 2 (d) (1) but rather to 2.1 (e) (ii).</p> <p>Consider a higher limit of 35% in the context of prevailing market practice in portfolio management and asset allocation strategies.</p>

28 (2) (g)(iii)	<p>Please make this definition/wording accord precisely with the wording used in Table 1 Item 4.1(b). The corrected wording has been inserted in the immediately adjacent column.</p> <p>"item 4.1(b) Immovable property and claims secured by mortgage bonds thereon, <u>preference and ordinary shares in property companies as well as property shares, secured loans and debentures</u> not listed on an exchange;"</p>	
28(2)(h)	<p>The aggregate <u>sum of</u> exposure <u>of to</u> assets <u>under specified in</u> the following items of Table 1 may not exceed 10% of the aggregate fair value of the total assets <u>of a fund</u>:</p> <p>(i) item 3.1(b) Preference and ordinary shares in companies, excluding shares in property companies, not listed on an exchange;</p> <p>(ii) item 8.1(b) Private equity funds.</p> <p>CURRENT WORDING: "The aggregate sum of exposure of assets under the following items of Table 1 may not exceed 10% of the aggregate fair value of the total assets;</p> <p>(i) item 3.1(b) Preference and ordinary shares in companies, excluding shares in property companies, not listed on an exchange;</p> <p>(ii) item 8.1(b) Private equity funds."</p> <p>SUGGESTED WORDING: Delete</p> <p>Change "total assets" to "total assets of the fund".</p> <p>after the words "fair value of the total assets" add "of the fund".</p> <p>Delete clause 2(h)</p>	<p>Widen definition of "exchange" otherwise listed shares on unrecognised exchanges will be regarded as unlisted and form part of this aggregate limit. That will have a crowding-out effect on unlisted equity and private equity.</p> <p>Clarify why a further, more restrictive 10% limit should apply to the aggregate of unlisted equity and PE funds. Why should PE exposure crowd out a fund's ability to invest in unlisted equity, incl. equity listed on unrecognised exchanges?</p> <p>Increase the unlisted company limit to 15% to take advantage around the world of unlisted investment opportunities, including those in South Africa and Africa.</p> <p>Allow a long time period for Funds to comply with the limit on investment in unlisted equity, due to the long term of the contracts already entered into which may now be in breach.</p> <p>Provide a dispensation to African exchanges and private equity to allow investment in these opportunities, in line with the political comments at the time of inception of this allowance two years ago. Either the definition should incorporate African exchanges better, or indeed the regulation should also refer to those exchanges in the process of reaching full member status of WFE.</p> <p>Exclude future public to private transactions from this definition for a transition period of greater than 2 years to allow the opportunities to be realised without immediate regulatory and price prejudice.</p>

28(2)(i)	<p>The sum of aggregate exposure to an issuer or entity by the fund under items 1.1 (Cash Inside the Republic) and 2.1(c) (Debt instruments issued or guaranteed by a South African bank or a foreign bank), of Table 1, irrespective of the limits referred to in Column 1 of Table 1, may not exceed 25% of the aggregate fair value of the total assets of a fund</p> <p>Change "total assets" to "total assets of the fund".</p> <p>after the words "fair value of the total assets" add "of the fund".</p>	<p>Simplify if proposal to group all debt instruments is accepted. Refer to the comments on the definition of "cash" and items 1 and 2.1 of Table 1.</p> <p>Consider including the exposure to the equity of a company.</p> <p>Consider that to the extent that different instruments rank differently with respect to priority of payment in certain cases of distress of the issuer, these instruments' risk is not equivalent and hence exposure to them is also not equivalent.</p> <p>Consider increasing limits in some cases because to the extent that certain structures may hold collateral in a certain format, it may substantially change the risk of the instrument when compared to an uncollateralised structure, and hence exposure limits could be higher in such cases.</p> <p>Apply this limit to uncollateralised exposure only.</p>
28(2)(j)	<p>The sum of aggregate exposure to foreign assets, referred to in Column 1 of Table 1 and expressed as a percentage, may not exceed the maximum allowable amount that a pension fund may invest in foreign assets as determined in terms of an Exchange Control Circular issued by the South African Reserve Bank.</p> <p>SUGGESTED WORDING: "The sum of aggregate exposure to foreign assets, referred to in Column 1 of Table 1 and expressed as a percentage, may not exceed the maximum allowable amount that a pension fund may invest in foreign assets as prescribed by the registrar"</p>	<p>Amend wording for consistency. Delete reference to an Exchange Control Circular to provide that the Reserve Bank can determine a limit in any form.</p> <p>Remove contradiction between the draft (limits set by SARB) and explanatory memorandum (limits set by the registrar). More flexible if the foreign limits are set by the registrar. For example, the registrar may wish to set lower limits or deal differently with JSE inward listings and funds would be subject to SARB limits in any case.</p> <p>Enhance the SARB limit by having an additional limit applied by the regulator (the Financial Services Board – FSB). This limit could really be a limit on currency mismatching. At the moment, this limit could be above the current SARB limit, as this limit is still fairly low, and it could be increased by the FSB as and when the SARB increases its limits and the FSB has evidence from the industry that the overall limit can be raised without undue risks being undertaken for members.</p> <p>Clarify whether the limits will be set by the SARB (as stated in Regulation) or by the Registrar (as stated in explanatory memorandum). The objectives of exchange controls and prudential limits are different in our view. We believe the prudential limit should be set by the Registrar.</p> <p>Remove references to Exchange Control Circulars so that the SARB may lay down limits in any medium it deems appropriate.</p>

28(2)(k)	<p>(k) Despite paragraphs (a)-(j), the limits set out in this regulation and Table 1 may be exceeded where the excess is due to an increase or decrease in the fair value of investments because of involuntary events, amongst others, market movements, nonoptional corporate actions and changes in the market capitalisation of a security that is listed on an exchange.</p> <p>(k) SUGGESTED WORDING: "Despite paragraphs (a)-(j), the limits set out in this regulation and Table 1 may be exceeded where the excess is due to changes in regulation or an increase or decrease in the fair value of investments because of, amongst others, market movements, non-optional corporate actions and changes in the market capitalisation of a security that is listed on an exchange."</p>	<p>Clarify "changes in market capitalisation of a security" as this is covered in "market movements". It may talk more specifically to individual securities whereas the latter term may be interpreted as markets in aggregate. Consider giving clearer examples here (unless this is relegated to an annexure or information circular from the FSB), describing what is allowed and disallowed. For example, if the market capitalisation of a security had to cross from a higher allocation limit (say 15%) to a lower limit (say 10%), would a fund not need to apply this restriction? This could again really complicate the issues of monitoring and reporting on this.</p> <p>Clarify relationship of 28(2)(k) with Regulation 28 (2) (a)(ii).</p> <p>Add "changes in regulation" to the list of factors. This would provide some certainty around transitional arrangements which may help minimise potential market distortions.</p>
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28(2)(l)	<p>CURRENT WORDING: Where the limits referred to in paragraphs (a)-(j) are exceeded -</p> <p>(i) a fund may not, for as long as the excess continues, make any further investments in the assets or categories of assets in respect of which the excess exists; and</p> <p>(ii) the registrar may require a fund to comply with asset limits referred to in Column 1 of Table 1 within a period of 12 months or another period determined by the registrar.</p> <p>We suggest a change to something like: "Where any of the limits in this regulation are exceeded:</p> <p>(i) a fund may not, for as long as the excess continues, make any further investments in the assets or categories of asset in respect of which the excess exists, and should assess whether or not and over what time period the exposure should be reduced;</p> <p>(ii) "</p> <p>(l) Where the limits referred to in paragraphs (a)-(j) are exceeded - (i) a fund may not, for as long as the excess continues, make any further investments in the assets or categories of assets in respect of which the excess exists; and (ii) the registrar may require a fund to comply with asset limits referred to in Column 1 of Table 1 within a period of 12 months or another such longer period determined by the registrar.</p>	<p>Draft tighter, since as it stands it only applies to sub-paragraphs (a) – (j) and not to sub-paragraphs (a) – (j) and the limits in the table. The idea of the clause seems to be when and how should a fund bring itself back into line if limits under the entire regulation are breached due to, for instance market movements. The fund, not the Registrar, should have the onus to keep tabs on their exposure and correct it over time / in a prudent fashion.</p> <p>Consider commitment funds (see comments above in respect of DGN; pg 4, Reg 28(1)(b)(v) and (vi)). A pension fund will need to continue meeting its existing commitments, though obviously it should not make new commitments. Also, longer transition periods only should be at the Registrar's discretion.</p> <p>Clarify in 28(2)(l) whether monthly contributions in a member choice fund will be regarded as further investments.</p>
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28(2)(I)(i)	<p>a fund may not, for as long as the excess continues, make any further investments of new commitments in the assets or categories of assets in respect of which the excess exists; and</p> <p>Amend wording in 2 (I) (i) so that a pension fund can continue to honour their contracted capital call (draw down) commitments that may arise during the life of the private equity fund as follows: ".....investment in the assets or categories of assets in respect of which the excess exists, save for any contractual obligations entered into by the fund; and..."</p>	<p>Take into account contractual obligations to the affected asset. A pension fund may have committed itself to, for instance in investing in a private equity fund where the portfolio of investments held have increased substantially in value.</p>
28(2)(I)(ii)	<p>the registrar may require a fund to comply with asset limits referred to in Column 1 of Table 1 within a period of 12 months or another longer period determined by the registrar.</p>	
28 (5) Look-Through		<p>Make "look-through" principle more pronounced.</p> <p>Extend the wording to require the look-through principle to be applied to hybrid securities, such as convertible debt securities.</p> <p>Extend the same exemption possibilities for Regulation 28 compliant CIS portfolios and linked insurance policies also to ETF and ETN products listed on JSE that qualify. This would assist in reducing the reporting burden for those funds that use such products.</p> <p>Apply the look-through principle where a certificate is issued confirming that a fund is regulation 28 and if the manager of such scheme chooses to declare the underlying assets to the Fund. Require that the underlying CIS (and/or Insurance Company) should disclose also the asset allocation of the underlying portfolio so as to enable the Trustees of a Fund to make appropriate investment decisions regarding the remainder of the Fund Assets that would be in the best interests of members, and still ensure that the portfolio is in compliance with Regulation 28.</p>

28(5)(a)	<p>In the application of this regulation with regard to the total assets of a fund, the following shall not be deemed to be an asset of the fund:-</p> <p>(i) participatory interests in a collective investment scheme, in respect of which a fund obtained a certificate issued by the auditor of the scheme that the assets of the scheme have met, throughout the reporting period, the distribution requirements of assets referred to in Table 1 and the other limits referred to in this regulation;</p> <p>(ii) a linked policy as defined under the Longterm Insurance Act, in respect of which a fund obtained a certificate issued by the statutory-actuary of the insurer that the assets held by the insurer in respect of his net liabilities under the said policy have met, throughout the reporting period, the distribution requirements of assets referred to in Table 1 and the other limits referred to in this regulation;</p> <p>(iii) a long-term insurance policy, other than a policy referred to in paragraph (ii) above, that guarantees or partially guarantees policy benefits in respect of which a fund obtained a certificate from the insurer that the Registrar of Long-term Insurance is satisfied that the policy has a bona fide guarantee, and that the insurer does not have unreasonable discretion over policy benefits and complies with prudential requirements under the Long-term Insurance Act.</p>	<p>Give clear guidelines in respect of which the Registrar of Long-term Insurance will consider whether the policy has a bona fide guarantee and that the insurer does not have unreasonable discretion over policy benefits and complies with the prudential requirements under the Long-term Insurance Act.</p> <p>Allow a time period within which insurers can apply for the necessary approvals.</p> <p>Refer to discussion in submission</p> <p>Clarify how best a fund should report a note referencing the price of a commodity.</p> <p>Clarify whether a commodity linked note would be considered debt or commodity.</p> <p>Clarify the application of the look through principle especially given that the draft places a legal obligation on pension fund trustees to consider <i>inter alia</i> credit and market risk factors prior to an investment.</p> <p>Clarify. With respect to (a), the regulation goes beyond the investment limits in Table 1 (for example, there are certain aggregation limits), and yet these are the only limits that seemed to be imposed on collective investment schemes (i) and linked policies (ii). We understand that (iii) may be the only practical way to deal with non-linked policies or policies with complete or partial guarantees.</p> <p>Include the credit risk of insurers in the scope of the proposed look-through dispensation. It is interesting to note that there was a possibility that even the largest SA insurer could have defaulted on its obligations if markets had dropped not insubstantially more than they did post the recent market crash.</p>
28(5)(a)(i)	<p>CURRENT WORDING: "in respect of which a fund obtained a certificate issued by the auditor of the scheme"</p> <p>SUGGESTED WORDING: "in respect of which a fund obtained a certificate issued by the scheme"</p>	<p>Rely on scheme's annual audit to verify the issuing of certificates.</p> <p>Consider practical implications as the funds and the respective Collective Investment Schemes are likely to have different year-ends, and thus additional audit work will be required to be performed by the auditor of the Collective Investment Scheme to be able to issue the certificate or statement to the fund at the end of each financial year of the fund.</p>
28(5)(a)(ii)	<p>SUGGESTED WORDING: "in respect of which a fund obtained a certificate issued by the insurer"</p> <p>[A minority view was that there was no harm in requiring the statutory actuary to issue these certificates.]</p>	<p>Rely on insurer's annual audit to verify the issuing of certificates.</p> <p>Clarify the format and detail of the information to be included in the certificate provided by the statutory actuary of the respective long term insurer, so as to ensure consistency across the industry.</p>

28(5)(a)(iii)		Clarify what is meant by a "bona fide guarantee" or what would constitute a "bona fide guarantee". For example, is a long term-term policy that offers a 2.5% guarantee a bona fide policy? How will this be judged? Left as currently drafted, insurers could still get around reg28 if they so wished.
28(5)(b)	<p>In the case of a collective investment scheme or a long-term insurance policy in respect of which no certificate or exemption as referred to in paragraphs (a) has been obtained, the fund shall obtain a statement in writing containing particulars of the assets in the collective investment scheme or held under the long-term insurance policy, and issued by the auditor of the scheme or the statutory actuary of the insurer, as the case may be, and the fair value of such assets shall be deemed to be assets of the fund.</p> <p>CURRENT WORDING: "and issued by the auditor of the scheme or the statutory actuary of the insurer"</p> <p>SUGGESTED WORDING: "and issued by the scheme or the insurer"</p>	<p>Refer to the comments on Regulation 28(5)(a). Delete the words "or exemption" in the second line of (5)(b) as none of the provisions in paragraph (a) provide for an exemption and refer only to a certificate.</p> <p>Clarify the implication that if the assets are deemed to be assets of the Fund, it implies that they need to comply with this regulation (at aggregate Fund level or member level as the case may be). The same restrictions therefore apply.</p> <p>Tighten the wording as it currently seems to imply that all the assets of the collective investment scheme or linked policy are the assets of the Fund, whereas what is actually meant is the Fund's participatory interests only i.e. that statement will contain a full list of the assets of the vehicle at fair value, but not all of these should be deemed to be the assets of the Fund, only its proportionate share.</p>
28(5)(c)(ii)	<p>CURRENT WORDING: "Despite subparagraph (i), if a fund is exempted under section 2(5)(a) of the Act, the certificate or statement must be issued at the end of the insurer's financial year."</p> <p>SUGGESTED WORDING: ?</p>	Clarity required.

<p>28(5)(d)</p>	<p>Any direct or indirect exposure to a foreign asset must be disclosed as a foreign asset.</p> <p>CURRENT WORDING: "Any direct or indirect exposure to a foreign asset must be disclosed as a foreign asset."</p> <p>SUGGESTED WORDING: Delete</p>	<p>Provide clarity on whether Rand denominated listed securities (dual listed shares) will have to be re-classified as foreign. It may have a significant impact on funds. Definition in line with SARB definition but not ideal in this context. Dual listed shares and Rand denominated CISs that invest globally which are currently regarded as domestic assets will have to be re-classified as foreign investments. This may adversely impact on the current investments of a retirement fund.</p> <p>Provide clarity on whether Rand denominated listed securities (dual listed shares) and domestically issued credit linked notes in respect of foreign issued bonds/debt instruments will have to be re-classified as foreign. It is submitted that they should not, as they are local currency exposures, often to businesses that have most or a large part of their operations in SA.</p> <p>Clarify. Redundant and potentially confusing as 2(c) already requires "true nature".</p> <p>Redraft to create clarity on the implications of local companies being affected in terms of their foreign status by purchasing or setting up successful offshore subsidiaries or indeed offshore companies purchasing local entities etc. If this is not done, the Regulator may see more and more institutional assets finding their way into South Africa fixed interest and banks, and the lack of equity risk taking will increase the burden, risk and cost of retirement cash flow provision and inflation protection. Pension Funds Balance Sheets will be weaker than they are.</p>
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28(5)(e)	Any direct or indirect exposure to a hedge fund or private equity fund or listed collective investment scheme in property must be disclosed as an investment into a hedge fund or private equity fund or property as the case may be, and further look-through is not applicable in respect of a hedge fund or private equity fund's the underlying assets of the hedge fund or private equity fund or collective investment scheme in property.	<p>Do not apply look through to collective investment schemes in property. It would serve no real purpose to look-through to the underlying portfolio of properties as these collective investment schemes (PUTs) are listed on the JSE.</p> <p>Carefully define hedge and private equity funds and impose limits on what they can and cannot do so that they don't become the new wrappers. This seems to have been completely left open beyond the limits of 10% and the requirement that you cannot lose more than the money you invested.</p> <p>Clarify proposal not to look through hedge funds or private equity funds, specifically also about whether this applies to fund of funds as well?</p> <p>Redraft this clause to accommodate the issues around listed equities and hedge or private equity fund exposure within these equities. Whilst this is very clear for banks and owners of banks, it is also clear for insurance companies and owners of insurance companies, as well as a selection of financial service companies listed on the JSE and abroad. Also, the restrictions on private equity need to be thought through more clearly as private equity is nothing more than illiquid equity. Certainly all asset liability models recognise this.</p> <p>Clarify. It says no further look-through applies to hedge funds and funds of hedge funds. Thus, a hedge fund may invest in offshore or unlisted instruments and the pension fund won't have to include these exposures in their foreign and asset class exposures? Is this also the case for quarterly SARB reporting i.e. any foreign exposure obtained through hedge funds won't be reported to SARB as part of the pension fund's total offshore investments?</p>
5(d) and 5(e)		Clarify how foreign assets of a hedge fund / private equity fund are to be dealt with. It seems that any foreign assets held by hedge fund or private equity fund would have to be reported as such (i.e. 5 (d) overrides 5 (e)). However, the two sections might be read that 5 (e) based on its current wording implies, that no look through for investment into a South African hedge fund or private equity fund's assets is required to be performed / reported on.
28 (6)		Clarify whether the no-borrowing principles in (6) imply that a fund of hedge funds will not be allowed to have gearing (but the underlying hedge funds constituting the fund of hedge funds may have gearing)? If a fund of hedge funds does employ gearing, it is proposed that this fund of hedge funds will also be subject to the 2.5% limit on a single hedge fund (and not the 5% limit to a fund of hedge funds, given the increased risk with gearing).
28(6)(c)	CURRENT WORDING: "A fund may not be the borrower in a loan agreement, except a money market instrument, that provides for an early settlement penalty." SUGGESTED WORDING:?	<p>Clarify.</p> <p>Clarify whether this should be referring to "lender" instead of "borrower"? Investing in instruments (like money market) that promise to pay back, makes you the lender.</p>