Item 2.1(c) (cont.)	"Debt instruments issued or guaranteed by a bank or foreign bank against its balance sheet: 100%"	We do not understand why bank exposure is restricted to 75%, particularly given that CISCA and the current Reg 28 permit 100%. In addition, we do not understand why item 2(c) deals only with SA banks. We suggest that all mention of country is removed, with the result that foreign exposure is limited only by exchange controls, which we know are subject to frequent change. Consider increasing the limit for all issuers/entities for Debt Instruments issued or guaranteed by a South African Bank against its balance sheet from 75% to 100%, but also consider: o the risk of moral hazard by permitting 75% in bank paper only as it may put added pressure on the central bank/ government to bail out a failing bank in that eventuality (since the proposed 75% limit for banks seems to endorse banks as issuers ahead of corporates, since corporates only have a 25% debt limit in terms of Item 2.1(e). o The risk of investors in bank debt adopting the view that a bank is "too big to fail" by virtue of the bands per issuer which are applicable pursuant to the proposed provisions of Items 2.1(c)(i) to (iii) being linked to the market capitalisation of banks (rather than their solvency of capital adequacy ratios, or some more appropriate risk measures). It needs to be remembered that the banks' regulator can influence their capital adequacy etc., but it cannot directly influence a bank's market capitalization. It is proposed that consideration be given to using measures other than "Market capitalisation".
Item 2.1(d)	CURRENT WORDING: "5% per issuer, 25% for all issuers" SUGGESTED WORDING: "10% per issuer, 50% for all issuers" "10% per issuer, 50% for all issuers" Debt instruments issued or guaranteed by a wholly owned state owned entity, provincial government or local government in the Republic. ~~5~~10% ~~25~~50%	Increase limits for parastatal debt that is not govt guaranteed to 50% in aggregate and 10% per issuer. The affected parastatals include for example the Development Bank, Rand Water, Eskom and the Land Bank. An increased limit will also support the principle of responsible investment. If this proposal is not acceptable, ASISA members then respectfully request that the proposed 25% limit in item 2.1(e) be increased to 50%. Expand section to allow for debt issued by any public entity listed in the Public Finance Management Act, irrespective of whether such a public entity is a wholly state owned entity, provincial government or part of local government up to 100% of the fund, with a 20% limit per issuer. It is unnecessarily restrictive to limit parastatals to 5/25 when the current Reg 28 more sensibly permits 20/100. An increased limit will: (i) firstly, avoid an inadvertent "crowding-out" effect on the investment capacity for non-stated owned corporates; and (i) secondly, support the principle of supporting responsible investment.
Item 2.1(d)(i)		Consider credit band limits because it is important to add a layer of protection in the regulation. Lower limits could be used than are currently available for lower rated instruments, so that even tick box behaviour couldn't lead to more risk. You don't need to remove the requirement for proper due diligence on all instruments irrespective of the ratings assigned by the credit ratings agencies.

Item 2.1(e)	CURRENT WORDING: "5% per issuer, 25% for all issuers" SUGGESTED WORDING: "5% per issuer, 50% for all issuers" or "5% per issuer, 50% for all debt issued or guaranteed by entities who have listed equity, 25% for all other issuers"	Duplicate 3.1(a)(to provide for debt instruments issued or guaranteed by listed companies to be treated equally to the same companies' listed equity since the risk of corporate failure and therefore loss to the fund affects both investment types equally and in fact, bonds/debt rank higher in the creditor ranking than equity. OR Increase the 25% limit to 50% and include a subparagraph to provide for debt issued by a listed company with a per-issuer limit of 5% and an aggregate limit of 50%. Do not limit other debt instruments to 25%, which is no higher than the current limit. Our April 2010 proposal was for this to be 100%.
	"5% per issuer, 50% for all issuers, 25% for all entities whose equity is not listed" Or Repeat 3.1 (a) equity limits for listed debt of companies whose equity is listed.	Clarify the discrepancy between the allowance for listed corporate debt (25%) and listed equity (75%) Increase limit for corporate debt to 50% subject to the company having a listed equity as currently it is inconsistent with the limits set for equity. Does not recognise that the debt of companies whose equity is listed ranks higher than the equity of such companies.
	Debt Instruments issued or guaranteed by companies, excluding debt instruments issued by property companies, which company's shares are listed on an exchange: - **75%**	Insert new provisions to provide for 75% investment into debt instruments that are backed by same balance sheet as listed equity, with per issuer/entity limits linked to equity market capitalisation, as is currently the case for listed corporate equity. Failure to make such an amendment, would – it is respectfully submitted – result in a highly questionable anomaly. If the legislator doesn't accept the aforegoing submission in respect of debt instruments issued by companies, then it needs to include the overall/aggregate limit to 50% (still 5% per company). But this is only a second choice alternative.
Item 2.1(e)(i)	Should read "listed on an exchange or regulated by the Financial Services Board". with an equity market capitalisation of R20 billion or more, or an amount or conditions as prescribed; **15%**	
Item 2.1(e)(ii)	Should read "not listed on an exchange or regulated by the Financial Services Board". with an equity market capitalisation of between R2 and R20 billion, or an amount or conditions as prescribed; **10%**	Consider whether intended that currently a Fund could hold 10% in a private equity fund, and an additional 15% in unlisted debt instruments, combining to a total of 25% in unlisted and unrated debt instruments. Increase the 15% limit for unlisted debt to closer to 25%.

Item 3: Equities		Clarify the wording "Preference and ordinary shares in companies,..., listed on an exchange: - with a market capitalisation of R20 billion" which is ambiguous because its not clear whether the market capitalisation categorisation is relevant to the 'companies' or to the 'exchange'. Confirm that look through would be required for depository receipts (DR), exchange-traded funds (ETFs), and exchange-traded notes (ETNs). Clarify whether the fact that in the case of Africa Board dual listings the primary listing would be deemed to be "unlisted" in terms of the proposed rules, and purchases of the secondary listing on the JSE would be considered as a normal instrument "listed on an exchange". Should this not be the actual intention of the rule then the wording would need to be changed to reflect this reality.
Item 3 and 4		Amend wording to simply refer to "shares" as once the new Companies Act is effective the notion of preference shares will no longer exist.
Item 3.1(a)		Consider reducing the limits to 10%, 5% and 2.5% respectively. . A Fund could effectively invest all their equity (75% of their assets) in 5 shares of the large cap companies. Consider adding a fourth band for companies below a certain market cap, and a limit of 1% could be used. We are thinking of reducing the possibility of unfavourable events due to bad luck, lack of skill or knowledge, or just plain unscrupulous behaviour by certain market participants. Consider aggregation limits for the three or four bands. The bands may have overall limits of 70%, 40%, 20% and 10% respectively say (the last band would be for the band with a limit of 1% if this was created. Section (3.1)(a) can be circumvented without look-through.
Item 3.1(b)	CURRENT WORDING: "(i) Incorporated in the Republic (ii) Not incorporated in the Republic" SUGGESTED WORDING: Delete Replace aggregate "10%" with "15%"	Refer to comments on the definition of "exchange" and on Regulation 28(2)(h). Remove country-specific limits and restrict foreign exposure only by exchange control. Clarify why non-SA unlisted equity has a lower limit. Given the restrictive definition of "exchange", most African equity will be unfairly subject to this 5%. Consider reducing the per issuer limits from 2.5% to 1%. Increase the allowed aggregate exposure to "unlisted equity" to 15%. In the absence of this change, most African equity will, given the restrictive definition of exchange, be unfairly subject to 5%, which is contrary to current investment trends, and also stated policy. (Note: the issue can also be remedied by taking a CISCA approach to the definition of "exchange", as submitted).
Item 4 Immovable Property		Consider lowering the limits and increasing the bands in terms of market cap. Clarify in the description in the table of the draft schedule whether PLS companies fall under the idea of "shares in property companies."

Item 4.1(a)	CURRENT WORDING: Equity boundaries = R20bn and R2bn Property boundaries = R10bn and R3bn SUGGESTED WORDING: Equity boundaries = R20bn and R2bn Property boundaries = R10bn and R1bn	Make property boundaries proportional to equity boundaries, so R10bn and R1bn. Provide exemption from the per issuer limit for Shari'ah compliant property unit trusts due to the current limited availability of these property unit trusts. Make the per-issuer allowance for listed property consistent with the allowances for listed equity. For example a pension fund may invest 10% in listed equity with a market cap of between R2bn and R20bn, whereas 10% may be invested in listed property with a market cap of between R3bn and R10bn. Given that liquidity is generally much lower in listed property than in listed equity, one would expect the per issuer limits to be lower rather than higher. Reduce the lower band to R1bn, in line with the principles applied in determining the equity investment thresholds and in symmetry with the rules applied to equities. We propose the following limits being applicable to investment in property generally: *(i) With a market capitalization of R 10bn or more* *15%* *(ii) With a market capitalization between R 1bn to R10bn* *10%* *(iii) With a market capitalization less than R1bn* *5%* The current proposal would result in an unbalanced allocation of pension fund assets towards the larger funds, to the detriment of small and medium sized property companies. The pre-amble to the revised regulation 28 emphasises that funds should seek to promote black economic empowerment. Many BEE entities and smaller property funds have a small market capitalization and through this regulatory design, such a strategy of limiting investment into smaller companies will in fact make it more difficult for these companies to grow. We believe is against the spirit of such legislation and as set out hereunder propose that the lower limit be amended.

Item 4.1(b)	CURRENT WORDING: "Immovable property and claims secured by mortgage bonds thereon, ..." NO SUGGESTED WORDING Remove the wording "claims secured by Mortgage Bonds thereon".	Align wording with Regulation 28(2)(g)(iii) Exlcude "claims secured by mortgage bonds" (participation mortgage bonds) from property and classified under Debt. Returns are interest-based. Amend items 2.1(e)(i) and (ii) to incorporate debt instruments regulated or not by the Registrar of Collective Investment Schemes e.g. a participation mortgage bond scheme. Clarify whether mortgage backed securitisations fall under property. Given the governance burden of the investment, such a small allocation is not likely to be considered worthwhile. The risk is that funds would not consider direct property investment and thus exclude an asset class which can be a very good match for funds faced with a cash flow burden, for example, pensioner payments. Keep "claims secured by mortgage bonds" under the property category for the following two reasons: o Loans against property have much higher loan-to-value exposures than loans not secured by property, and consequently the lender is assuming extensive property risk (typically 85%, but often even higher). To argue that the inherent value of the fixed property doesn't figure highly in the analysis of a lender is disingenuous, and *puts form ahead of substance*. o To argue that a mortgage bond is a debt instrument is legally and factually incorrect. The mortgage bond is in fact a form of collateral/a security. It could be used to secure a vast array of different claims, including, without limitation: a debt instrument; a suretyship; a guarantee; a performance bond; a trade creditor's claim; the claims of a body corporate against its members.

Item 5: Commodities		Include a reference to benchmark price sources in 5.1 (a). Coal is an example of a commodity which is not listed on an exchange, its price is published by benchmark price sources. Clarify whether long-only commodity funds will qualify as a "commodity". Lower the 10% limit or introduce commodity limits of 5% or 2.5%. Clarify what is meant by "exchange traded commodities". Is this referring to commodity based Exchange Traded Funds (ETFs)? What about debenture structures, like NewGold? Are there any other rules or restrictions that would apply? For example, could a Fund invest in an oil ETF constructed entirely using futures contracts? What about leveraged ETFs? Contemplate commodity exposure more carefully in terms of the risk to schemes. It is currently included at a level similar to private equity or hedge funds. Certainly volatility and currency exposure, among others, would have this restriction seem inconsistent with the whole view of risk in the Regulation. Additionally, this area does not earn income or have cash flows that look like Pension cash flows. An asset liability model would highlight the risk. It should be alarming to think of the implications of an R80 billion Pension Fund holding 10% of its assets in gold and copper, given not only the assets and their price volatility, but the liquidity too. There is no limit on the amount that can be held in an individual commodity other than the 10% limit on total exposure. This appears high considering the volatility of commodity prices, and is inconsistent with per issuer limits applied to other asset classes. Broaden investment into commodities to ensure that this is brought within the scope of Reg 28. A Hedge Fund, as it is unregulated, may invest in both listed and unlisted commodities. This creates a regulatory loop-hole in the current design. In South Africa, unlike international markets, only a limited number of commodities are listed on an exchange. For example, funds are unable to obtain exposure to metals such as Platinum, Palladium, and Silver through the South African exchanges. Further, investment into direct commodities, not listed on an exchange may in fact present lower risk to Funds than investing in listed vehicles such as Exchange Traded Funds. Direct holdings would not expose a fund to any form of credit risk. In the context of an Islamic Compliant pension fund, and in the definition of an Islamic Debt instrument and an Islamic Liquidity Management Financial Instrument as contained within Draft 2, recognition is already given to the fact that such an instrument functions through the purchase and sale of an underlying tangible asset, which passes from a fund to a third party. Such underlying assets may in fact constitute commodities. We believe that the fact that such instruments are being recognized supports the extension of the definition of commodities to include unlisted commodities. 28.
Item 5.1(a)		Delete reference to "including exchange traded commodities". Exchange traded commodities are by definition listed on an exchange.

Item 6	CURRENT WORDING: Section 19(4) limit = 10% Section 19(4A) limit = 5% SUGGESTED WORDING: Section 19(4) limit = 5% Section 19(4A) limit = 10%	Make percentage for (a) 5% and for (b) 10% in accordance with the Pension Funds Act. Ensure that limits are correct. The limits here seem to have been reversed accidentally. Stipulate a total aggregate cap for sub-categories 6a and 6b for the sake of consistency. Clear up the rules governing exposure to a participating employer to ensure that look-through cannot be circumvented. It also needs to be cleared up that this specifically applies to any one participating employer, rather than all participating employers as in the case of an umbrella fund.
Item 7		Remove item 7 be removed from Table 1. A loan to a member or a guarantee provided by a fund does not create an exposure to any asset for the fund. This limit must be captured elsewhere in regulations if it is deemed necessary to include. Section 19(5) of the Pension Funds Act contains limits. Consider allowing only direct housing loans rather than a bank loan because the member is obliged to redeem the loan at an interest rate of 15% per annum which is a better return than the average fund return. Experience also reveals that funds often apply stricter control measures in the event of arrear installments. Do not distinguish between the allowance for direct fund loans and bank pension backed loans. When a bank redeems the guarantee in the event of a defaulting member the pension backed bank loan is traded for a direct loan which will then exceed the 5%. In any event since inception of the National Credit Act few, if any, funds continued with direct loans because of the excessive burden introduced by the NCA. Decrease 95% limit to 50% or 60 % at the most for both direct fund loans and pension backed bank loans as 95% is excessive and will exacerbate the current problem of leaking via housing loans. Individual member's guarantee may go under water from time to time with a small buffer of only 5%, also member share may be insufficient to redeem the guarantee because of fluctuating markets eroding 5% buffer and because the debt to the bank may exceed the original 95% loan, due to arrears. In such event the shortfall will have to be carried by the fund that is the other members. Do not allow funds to guarantee loans for housing provided by third party institutions as in such cases members' own assets are not matched to the liability.
Item 7(a)	NO CURRENT OR SUGGESTED WORDING	Clarify whether the intention was for the limit for direct loans when applied at member level to be 5% of the member's portion, effectively ruling out direct loans.

Item 8: Hedge Funds, Private Equity Funds, and any Other Asset not Referred to in this Schedule		Consider requiring look-through, and more importantly, reconsider the ability for retirement funds to use, directly or indirectly, strategies that allow anything, including unlimited leverage, borrowing and shorting. We may not know what the real implications of some of these strategies may be. Could the investors be sued by the parties to whom money is owed if the positions are not appropriately closed out in time to limit the losses incurred as envisioned? Change limit for Fund of Funds to 10%. This is sufficiently low in our view due to the diversified nature of the investment. Increase exposure to private equity, hedge funds and other investments to 25% or the items should be separated as indicated and not restricted to 15%. Liquidity and the differences in risk and performance of these vehicles make them incomparable and lumping these together has no justifiable basis. It is suggested that the concerns over hedge funds and private equity funds and their definitions aside, the limits provided here are too thin. As an example, the total limit of hedge fund investment is given as 10%. But the fund of hedge funds is 5% and a single hedge fund is only 2,5% per fund. Therefore, assume a fund actually wanted to use its limit of 10% to the Hedge Fund category, it would be forced to use at least two fund of funds or if it wanted single operators, at least 4 hedge funds to achieve its 10% allocation. This "forced diversification" makes little sense. Respectfully, though mathematically appealing on the eye, there is little substance to the numbers suggested. We suggest doubling the subcategories: ie. Max 10% on fund of hedge funds, max 5% on a single hedge fund, while retaining the 10% total limit. That makes the provision more tractable and practical in application. The limits under Section 8 of Table 1 are specified "per fund" whereas elsewhere in the Table 1 the limits are specified "per issuer" or "per entity". However, "fund" is not clearly defined and it is not clear whether this refers to the legal structure of the fund, the manager of the fund, or any wrapper for example a life insurance policy linked to the hedge fund or fund of hedge funds. If a pension fund has an investment linked life policy linked to a fund consisting of a blend of long-only and hedge funds, will only the portion of the policy linked to the hedge funds be subject to the 10% overall hedge fund limits? (The long□only assets will then be counted with the pension fund's other assets and compliance measured against the other sections of Regulation 28.) Or will the total fund underlying the policy be seen as the exposure to a "fund of hedge funds", because according to the definition in the second draft a "fund of hedge funds" is a fund that consists "primarily" of hedge funds?
Item 8.1(a)(i)		Replace the reference to "per hedge fund" in the issuer limit column with "per fund of hedge funds" for clarity purposes. Limit Fund of Hedge Funds to 10% but define a fund of hedge funds as a fund that holds 4 or more single hedge funds. This will then be internally consistent.

Item 8.1(a)	CURRENT WORDING: Hedge funds 10% in aggregate Fund of hedge funds 5% per fund Hedge funds 2.5% per fund SUGGESTED WORDING: Hedge funds 10% in aggregate Hedge funds 2.5% per fund [A minority view was that 5% per hedge fund should be allowed, subject to an increased due diligence requirement.]	Remove the 5% limit on funds of hedge funds given their diversification benefits. Have a 24 month "sunset clause" within which to implement the 10% restriction on hedge funds. Some funds may be required to reduce their overall exposure to hedge funds since the 10% limit includes offshore hedge funds and pension. Remove the limit for exposure to a single fund of hedge funds and make such investment subject to the 10% maximum hedge funds exposure inside the Republic and foreign assets. Stipulate further that exposure to any underlying hedge fund constituting the fund of hedge funds should not exceed 2.5%. Alternatively, the definition of a "fund of hedge funds" may be expanded to incorporate the principle of diversification more practically by stating that no underlying hedge fund exposure in a fund of hedge funds should exceed 2.5%. The effect of this will be that, after look-through, a pension fund investing 10% in this fund of hedge funds will have no more than 2.5% exposure to any of the underlying hedge funds.
Item 8.1(b)	CURRENT WORDING Private equity funds 10% in aggregate Fund of private equity funds 5% per fund Private equity funds 2.5% per fund SUGGESTED WORDING Private equity funds 10% in aggregate Private equity funds 2.5% per fund [A minority view was that 5% per private equity fund should be allowed, subject to an increased due diligence requirement.]	Remove the 5% limit on funds of private equity funds given their diversification benefits. Provide that the underlying diversification sub-limits also be met.

Transition Arrangements		Combine 28(1) (a) and (c) and give funds 6 months to comply with this requirement. Require compliance within 18 months from the date of publication, otherwise must apply for exemption with Registrar. Consider a shorter period for retirement funds to implement an investment policy statement. Refer to comments on Regulation 28(1)(a) and (c). Require system development, design and implementation of new processes and procedures and extensive communication with stakeholders. Train advisors. Allow sufficient time for transitions to a compliant position. This will ensure a smooth transition to member level compliance. Allow additional time for member choice funds. Existing member choice funds may need to amend their rules to provide for compliance at member level. But have time limit, not ad-infinitum grandfathering from administrative cost perspective. Allow a time period within which insurers can apply for the necessary approvals wrt guaranteed insurance policies exemptions. Consult rigorously regarding transitional arrangements and the notice on derivatives before implementation of Reg 28. Clarify whether current strategies will be allowed to run until maturity where various uncollateralised transactions with prices received from counterparty banks assuming no collateral have been implemented by a fund over the previous year with expiry dates up until 31 December 2011. Allow 2-3 years for an orderly transition to the new dispensation that would not negatively affect investments and savings. In light of the proposed changes to the Regulations, the format of the Regulation 28 audit report will also need to be revised and approved by IRBA. We recommend that Registrar consult with IRBA as early as possible around the development of the new audit report; From an efficiency perspective, we suggest that consideration be given to asset managers reporting under Regulation 28 at the same time as for the quarterly reserve bank reporting. A combined SARB and Regulation 28 form could possibly be used which would still need to be redesigned; We are concerned about the auditing requirements and necessary disclosures in respect of investments by funds in derivatives. It may be impractical and time consuming for funds to get all of the derivative detail from the respective asset managers; We recommend that the timing of the implementation of the revised regulations and transition arrangements be further clarified. One matter that may be a big issue for funds is how to get Regulation 28 compliant on a member level without unnecessarily loosing money for non-transgressing members during the process. Consider the case of unregulated foreign investments and include a transition or grace period for registration of currently unregistered products and managers.