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)	A fund, ~~its advisors~~ and its trustees must at all times apply the following principles:- CURRENT WORDING: "A fund, its advisors and its trustees must at all times …" SUGGESTED WORDING: "A fund must at all times …" [A minority view was that there is no harm in advisors being included here.] 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). (*b*) A fund, its advisors and its trustees ~~must~~ shall at all times apply the following principles:-	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. Advisors are covered by other legislation which may conflict.
28(1)(b)(i)	comply with the spirit of this regulation and not try to circumvent this regulation; CURRENT WORDING: "comply with the spirit of this regulation and not try to circumvent this regulation" SUGGESTED WORDING: "invest with prudence and care, balancing the need for investment returns with appropriate risk management"	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. Impossible for the reader to know "the spirit" of any regulation. Anti-avoidance is already sufficiently covered in 2(c). Remove this clause or change wording that aligns itself to prudent investment since "spirit" is not well defined in law.
28(1)(b)(iii)		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.
28(1)(b)(iv)	ensure that the fund's assets, ~~including foreign assets~~, are appropriate for its liabilities;	Delete "including foreign assets" and rephrase as it is superfluous

28(1)(b)(v)	before making a commitment to invest in a third party managed fund or 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 before making a commitment to an investment fund managed by a third party, or before making 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.	Clarify the standards for "reasonable due diligence". 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. 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 *commitment* 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.
28(1)(b)(vi)	before making a commitment to an investment fund managed by a third party, or before making 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.	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?
28(1)(b)(vii)	in performing the due diligence referred to in (v) and (vi), funds may ~~use~~ take ratings issued by a recognised credit rating agency into account, but such ratings should not be relied on in isolation for risk assessment or analysis of an asset. in performing the due diligence referred to in (v) and (vi), funds may ~~use~~ have regard to 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 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.	Replace the reference to "use" be replaced with "take into account" to further illustrate that a fund should not rely solely on credit ratings Explicitly recognise that the clause is applicable to funds and their service providers, and not only to funds. 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.

28(1)(b)(viii)	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. 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.	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 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.
28(1)(c)	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.	
28(2)(a)	Reword 2(a) as "...Column 2 of Table 1 ***with respect to*** such an asset."	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. 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.

28(2)(b)	Where – (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 (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. 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.	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. Have time limit, not ad-infinitum grandfathering from administrative cost perspective.
28(2)(b)(i)		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. 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).
28(2)(b)(ii)	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.” “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.”	Clarity required with respect to member level compliance. 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.
28(2)(b)(v)		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

28(2)(b)(vi)		Clarify whether the comments around private equity apply to local investments also. Confirm whether the comments around foreign investments apply more generally than just private equity. Separate these issues out i.e. let point (vi) discuss foreign investments, and create a new point to discuss private equity funds only.
28(2)(b)(viii)		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).
28(2)(c) – (e)	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." 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?	Move clauses 2c and d to 28 (5) as these clauses relate to look-through. Increase 5% limit for collective investment schemes approved by the FSB to 10% as CIS safer than HF or PE. Clarify whether de minimis will apply to indirect exposure to foreign assets given that info on foreign assets often not readily available.
28(2)(c)		Clarify. Evaluate exposure to counterparties and disclose exposure both on the instrument (e.g. individual debt instruments, insurer policy) and portfolio (e.g. CIS) level. **C**larify 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.

28(2)(d)	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." Reword "... 5% of the aggregate fair value of the asset***s*** ***of the fund*** ..." 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."	Clarify *de minimis* 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. Clarify explicitly reporting requirements and purpose of de minimis rule. Move this clause to Clause 5. 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). 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. 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%.
28(2)(e)	**CURRENT WORDING:** 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.	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. 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. This concern is better dealt with by specifying a limit on investment in unregulated and unregistered CIS. 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. 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.

28(2)(e) (cont)	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." 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). 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."	If 10% limit is a proportion of the unregistered scheme, then 35% would be in line with majority rules in the Companies Act. 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. 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. Do not apply this provision to foreign collective investment schemes, the majority of which are not registered with the FSB for marketing in SA. 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.
28(2)(f)	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. Clarify by changing last line to "… in excess of the funds investments or committed capital into such asset investment fund". 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." 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."	Rephrase to clarify. The term "investment fund" is not defined and seems to be redundant. 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.

28(2)(g)	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: (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. 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." Change "total assets" to "total assets of the fund". Add "of the fund" after the words "fair value of the total assets" ie: fair value of the total assets of the fund. ".... may not exceed 40% ....."	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. 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. Impose restrictions for funds that have member choice. 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. 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. Expand the overall limit under Clause 2 (g) to 40% or remove unlisted debt from this list of assets. Retain a limit of 30% for "illiquid assets" in the Fund, but exclude hedge funds from this definition. Leave the grouping as is, but increase the limit to 40%. Contemplate true measures and restrictions of liquidity for all assets in the portfolio given the liability structure. 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.
28 (2) (g)(i)	The wording in the paragraph should cross reference to item 2 (**e**) (**ii**) Other debt instruments not listed on an exchange.	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). Consider a higher limit of 35% in the context of prevailing market practice in portfolio management and asset allocation strategies.

28 (2) (g)(iii)	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. "item 4.1(b) Immovable property and claims secured by mortgage bonds thereon, preference and ordinary shares in property companies ~~as well as property shares, secured loans and debentures~~ not listed on an exchange;"	
28(2)(h)	The aggregate ~~sum of~~ exposure ~~of~~ to assets ~~under~~ specified in the following items of Table 1 may not exceed 10% of the aggregate fair value of the total assets of a fund: (i) item 3.1(b) Preference and ordinary shares in companies, excluding shares in property companies, not listed on an exchange; (ii) item 8.1(b) Private equity funds. 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: (i) item 3.1(b) Preference and ordinary shares in companies, excluding shares in property companies, not listed on an exchange; (ii) item 8.1(b) Private equity funds." SUGGESTED WORDING: Delete Change "total assets" to "total assets of the fund". after the words "fair value of the total assets" add "of the fund". Delete clause 2(h)	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. 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? Increase the unlisted company limit to 15% to take advantage around the world of unlisted investment opportunities, including those in South Africa and Africa. 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. 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. 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.

28(2)(i)	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. Change "total assets" to "total assets of the fund". after the words "fair value of the total assets" add "of the fund".	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. Consider including the exposure to the equity of a company. 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. 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. Apply this limit to uncollateralised exposure only.
28(2)(j)	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. 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"	Amend wording for consistency. Delete reference to an Exchange Control Circular to provide that the Reserve Bank can determine a limit in any form. 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. 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. 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. Remove references to Exchange Control Circulars so that the SARB may lay down limits in any medium it deems appropriate.

28(2)(k)	(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. (k) SUGGESTED WORDING: "Despite paragraphs (a)-(j), the limits set out in this regulation and Table 1 may beexceeded 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."	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. Clarify relationship of 28(2)(k) with Regulation 28 (2) (a)(ii). Add "changes in regulation" to the list of factors. This would provide some certainty around transitional arrangements which may help minimise potential market distortions.

28(2)(l)	CURRENT WORDING: 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 period determined by the registrar. We suggest a change to something like: "Where **any of the limits** in this regulation are exceeded: (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; (ii) …. " (l) Where the limits referred to in paragraphs (a)-(j) are exceeded - (i) a fund may not, for as long as the excess ontinues, 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.	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. 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. Clarify in 28(2)(l) whether monthly contributions in a member choice fund will be regarded as further investments.

28(2)(l)(i)	a fund may not, for as long as the excess continues, make any further investments ~~or new commitments~~ in the assets or categories of assets in respect of which the excess exists; and Amend wording in 2 (l) (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..."	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.
28(2)(l)(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 longer period determined by the registrar.	
28 (5) Look-Through		Make "look-through" principle more pronounced. Extend the wording to require the look-through principle to be applied to hybrid securities, such as convertible debt securities. 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. 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.

28(5)(a)	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:- (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; (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; (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.	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. Allow a time period within which insurers can apply for the necessary approvals. Refer to discussion in submission Clarify how best a fund should report a note referencing the price of a commodity. Clarify whether a commodity linked note would be considered debt or commodity. Clarify the application of the look through principle especially given that the draft places a legal obligation on pension fund trustees to consider *inter alia* credit and market risk factors prior to an investment. 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. 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.
28(5)(a)(i)	CURRENT WORDING: “in respect of which a fund obtained a certificate issued by the auditor of the scheme” SUGGESTED WORDING: “in respect of which a fund obtained a certificate issued by the scheme”	Rely on scheme’s annual audit to verify the issuing of certificates. 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.
28(5)(a)(ii)	SUGGESTED WORDING: “in respect of which a fund obtained a certificate issued by the insurer” [A minority view was that there was no harm in requiring the statutory actuary to issue these certificates.]	Rely on insurer’s annual audit to verify the issuing of certificates. 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.

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)	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. CURRENT WORDING: "and issued by the auditor of the scheme or the statutory actuary of the insurer" SUGGESTED WORDING: "and issued by the scheme or the insurer"	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. 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. 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.
28(5)(c)(ii)	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." SUGGESTED WORDING:?	Clarity required.

28(5)(d)	Any direct or indirect exposure to a foreign asset must be disclosed as a foreign asset. CURRENT WORDING: “Any direct or indirect exposure to a foreign asset must be disclosed as a foreign asset.” SUGGESTED WORDING: Delete	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. 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. Clarify. Redundant and potentially confusing as 2(c) already requires “true nature”. 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.

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.	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. 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. Clarify proposal not to look through hedge funds or private equity funds, specifically also about whether this applies to fund of funds as well? 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. 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?
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:?	Clarify. 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.

28(6)(d)	CURRENT WORDING: “A fund may as collateral for the fund defaulting on a loan …” SUGGESTED WORDING: “A fund may as collateral for the fund defaulting on a loan or derivative transaction.” is not well phrased. Suggest redraft to: “If a fund defaults on a loan referred to in paragraph (b), the fund may as collateral - …. “	Allow funds to cede or grant options on derivatives as for loans instead of collateralising derivatives (which can be expensive)
28(7) Exemptions		Consider including a note from the registrar providing some guidance of how and when exemptions would be applied.
28(8) Definitions		Capitalise defined terms wherever used. Consider expanding the definitions, and including the definitions from the annexures in this part of the document.

28(8) **Definition of "cash"**	"cash" means: - (i) notes and coins; (ii) a deposit in a South African bank or a foreign bank; (iii) a positive net balance in a margin account with an exchange; and (iv) a positive net balance in a settlement account with an exchange, operated for the buying and selling of ~~underlying~~ assets; CURRENT WORDING: Move constituents of "Cash" … SUGGESTED WORDING: And include them under "money market instruments". Consider adding Negotiable Certificates of Deposit (NCDs) to the list of examples.	Include cash in debt category as term asset to facilitate the most appropriate asset liability matching results for a retirement fund. The liquidity requirement should come from a pension fund. Include negotiable certificates of deposit. Group short-term and long-term exposure to banks. Refer also to the comments on item 1 and 2.1 in Table 1. If the proposal is not accepted, define "deposit" in the same way as it is defined in the Banks Act. This will clarify and provide consistency in interpretation. See comments on use of cash in derivatives draft notice. Combine "cash" and "money market instrument" under "money market instrument" as distinction seems redundant. Clarify whether a Fixed Deposit is defined as "cash" or a "money market instrument**"**. Broaden definition of "cash" to include NCDs and Money Market Instruments. Alternatively, it may be worth considering deleting Item 1 of Table 1 in its entirety and including "cash" with "Debt Instruments" under Item 2 of Table 1. If the latter approach is adopted, then the maximum exposure limits need to be changed: the capacity for bank debt instruments needs to be increased from 75% to 100% and the Capacity for "Other Debt Instruments" also needs to be raised, because it will mean that corporate (listed or unlisted) short term commercial paper issues will use up the market's longer term funding capacity in Item 2.1(e), and in so doing have a "crowding out" effect and thereby diminish the ability for corporates to raise longer or medium term debt on a dis-intermediated basis (since retirement and pension funds' investment capacity for investing in corporate debt instruments may then be taken up by their investments in shorter term money market instruments). From a policy perspective, this would be a regressive step, as it would inhibit the ability of the domestic corprate bond market to grow (at a time when the SA bond market's listings requirements are in the process of being revamped by the JSE and will help borrowers reduce funding costs and hence optimize their capital structures). It is proposed rather, that inclusion of NCDs and CP be included under "cash", if necessary with market capitalisation limits along the lines of Items 2.1(c) (for banks) and 4.1(a) for listed corporates.
28(8) **Definition of "debt instruments"**		Provide clear definition of "debt instruments."

28(8) Definition of "exchange"	"exchange" ~~has the meaning assigned to it in~~ means an exchange licensed under section 10 of the Securities Services Act, 2004 (Act No. 36 of 2004) and, for the purposes of this regulation, any other exchange that is a full member of the World Federation of Exchanges or a member of the African Securities Exchanges Association or to which the due diligence guidelines as determined by the Registrar has been applied; CURRENT WORDING: "any other exchange that is a full member of the World Federation of Exchanges" SUGGESTED WORDING: "any other exchange that is a full member of the World Federation of Exchanges or to which the fund has applied the due diligence guidelines determined by the registrar" "any other exchange that is a full member of the World Federation of Exchanges or to which the fund or its agent has applied the due diligence guidelines determined by the Registrar" Reference should be had to section 14 of CISCA General Notice 569 of 2003 which sets out clear guidelines for due diligence of exchanges by the trustees or managers of collective investment schemes.	Widen definition of "exchange". To retain current approach will dramatically affect the ability of retirement funds to obtain exposure to listed securities in African markets, which has been a major trend in recent years as risk has been re-priced following 9/11 and the financial crisis of 2008. To entrench this restriction will also undermine policy which aims to encourage investment in African markets. Allow participation in stock exchanges that are members of the African Securities Exchanges Association (ASEA). Please also refer to the comments on Regulation 28(2)(h). Widen definition of "exchange". Only three African exchanges are members of the WFE, probably as a result of the high cost of WFE membership. Clarify the definition of "exchange" – currently it is either as defined in the Securities Services Act or any other exchange which is a full member of World Federation of Exchanges (the "WEF"). The London Metal Exchange (the "LME") is not listed as being a member. This may mean that pension funds cannot invest in metals traded on the LME. The LME accounts for something like 90% of the base metal market. Expand this definition to include the African Securities Exchanges Association, which currently has 22 members or those exchanges that are going through the process of being 'full members'. The definition of "exchange" is too narrow and certainly narrower than under CISCA. Only three African exchanges are members of the WFE, probably as a result of the high cost of WFE membership. To retain this approach will dramatically affect the ability of SA retirement funds to obtain exposure to listed securities in African markets, which has been a major trend in recent years as risk has been repriced following 9/11 and the financial crisis of 2008. To entrench this restriction will also undermine policy which aims to encourage investment in African markets.
28 (8) definition of "fair value"	"fair value" has the meaning assigned to it in financial reporting standards, *including "International Private Equity and Venture Capital Valuation Guidelines, edition September 2009",* and any other condition or provisions as may be prescribed	
28 (8) definition of "financial reporting standards"	"financial reporting standards" has the meaning assigned to it in the Companies Act, 2008 (No 71 of 2008)	Clarify whether the references to the Companies Act in the definitions to the regulations is appropriate as the Companies Act is not applicable to Retirement Funds in South Africa.
28 (8) add definition for "fund"		Clarify that the use of "fund" throughout the regulation refers specifically to a "pension fund" to avoid any confusion with "private equity fund", or "hedge fund".

28(8) Definition of "fund of hedge fund"		Define the word "primarily". It seems ostensibly this may mean anything more than 50%. In other words, the fund of funds could hold say 49% corporate bonds, and 51% fund of hedge funds and be deemed a "fund of hedge funds". This can severely undermine the look through process and allow regulations to be bypassed.
28(8) Definition of "fund of private equity funds"		Define the word "primarily". See above comment on "fund of hedge fund" definition. Such definitions potentially allow a provider to significantly bypass the regulations and look through principle.
28(8) Definition of "hedge fund"	"hedge fund" means a portfolio which uses any strategy or takes any position ~~that may~~ which could result in the ~~aggregate exposure of the~~ portfolio incurring losses greater than its aggregate market value ~~to that strategy or position exceeding the fair value of the portfolio~~ at any point in time, and which strategies or positions include but are not limited to leverage and net short positions; SUGGESTED WORDING: ""hedge fund" means a portfolio which uses any strategy or takes any position which could result in the portfolio incurring losses greater than its aggregate market value at any point in time. And which strategies or positions include but are not limited to leverage and net short positions" ""hedge fund" means a portfolio which uses any strategy or takes any position which could result in the portfolio incurring losses greater than its aggregate market value at any point in time. and which strategies or positions include but are not limited to leverage and net short positions"	Use definition of "hedge fund" in FAIS Act for legislative consistency because current definition is too broad and unworkable -it potentially includes any portfolio that includes derivatives. Redraft to a more technically accurate level of definition for the asset class or there may be unintended consequences. We continue to be concerned that the proposed Regulation seems to inadequately distinguish between hedge funds, private equity and any other unlisted or listed equity investment. In fact, it becomes clear that because the values of listed companies are not measured at NAV like private equity funds and hedge funds, listed equity assets actually carry more risk relative to their underlying assets. Given this unclear distinction between listed companies with indirect exposure to gearing, hedge funds, private equity etc., the Regulation as proposed requires many listed companies to be disclosed as hedge funds.
28(8) Definition of "Islamic debt insturment"	CURRENT WORDING: ""Islamic debt instrument" means an Islamic investment instrument that is a bond …" SUGGESTED WORDING:?	Clarify definition of "Islamic debt instrument" – currently it seems circular, referring to the undefined "Islamic investment instrument".
28(8) Definition of "long-term insurer"	"long-term insurer" means ~~a person~~ company registered or deemed to be registered as a longterm insurer in terms of the Long-term Insurance Act, 1998 (Act No. 52 of 1998).	

28(8) Definition of "money market instruments"	"money market instrument" means an instrument creating or acknowledging indebtedness ~~and is defined as~~ including but not limited to the like of:- ~~(i) "banker's acceptance" means a bill as defined in the Bills of Exchange Act, 1964 (Act No. 34 of 1964), drawn on and accepted by a bank as defined in the Banks Act, 1990 (Act No. 94 of 1990), or a mutual bank as defined in the Mutual Banks Act, 1993 (Act No. 124 of 1993);~~ (ii) "bill" means a bill as defined in the Bills of Exchange Act, 1964 (Act No. 34 of 1964); ~~(iii) "bridging bond" means an acknowledgement of debt in which the issuer thereof undertakes to repay the debt together with interest on the maturity of the debt to the holder of the bridging bond;~~ (iv) "commercial paper" means any negotiable acknowledgement of debt; (v) "debenture" means ~~a debenture as defined in the Companies Act, 2008 (Act No. 71 of 2008)~~ any document issued as evidence of the borrowing of money by an institution, whether constituting a charge on the assets of the institution or not; (vi) "Islamic ~~liquidity management~~ financial instrument" means a financial instrument that is issued by a South African bank or a foreign bank: – (aa) that is negotiable under specific conditions and with specific Shari'ah rules that govern the underlying transaction; and (bb) in respect of which the ~~title to~~ ownership of the underlying tangible asset or assets passes from a fund to a third party within seven business days from the date of purchase thereof, and at which purchase date the future sale price of the tangible asset or assets is fixed despite any increase or decrease in the market value thereof; ~~(vii) "land bank bill" means a bill or note as defined in the Bills of Exchange Act, 1964, drawn, accepted or issued by the Land and Agricultural Bank of South Africa;~~	More generic definition for "bills." Delete definition of bridging bond as not relevant anymore and can also be read as "commercial paper". Delete words "liquidity management" in the definition of "Islamic financial instrument" as is not necessary. Replace reference to "title" in definition of "Islamic financial instrument" with "ownership" to align with CISCA. Replace reference to "and is defined as" be replaced with "including but not limited to the like of" as this will provide for instruments that may in future be developed. The list should not be a closed list. Remove reference to Companies Act, 2008 in definition of "debenture". Debenture is not defined in the Companies Act, 2008. The definition in the Companies Act, 1973, only referred to companies and precluded debentures issued by the South African Reserve Bank. Amend subparagraph (vi)(aa) to ensure that the evolution of Islamic instruments is always aligned with Shari'ah rules. Show list of types of money market instruments, as the definition of "money market instrument" is unlikely ever to be comprehensive. Insert a general sub-clause in the definition of "money market instruments" that allows the registrar to add to the list when necessary. Also, how are inflation linked notes or exchange traded notes classified? Reduce level of prescription of Islamic finance instruments as it is not flexible enough to move along with developments in the new field of Islamic Finance law. Change "Islamic debt instrument" to "Islamic investment instrument". Align Islamic finance definitions with CISCA Notice 131 of 2010 or clarify, where conflict, which is to prevail.

28(8) Definition of "money market instruments" (cont.)	~~(viii) "national housing bill" means a bill or note as defined in the Bills of Exchange Act, 1964, drawn, accepted or issued by the National Housing Board;~~ (ix) "negotiable certificate of deposit" means a certificate of deposit issued by a South African bank or a foreign bank and payable to order or to bearer; ~~(x) "parastatal bill" means a bill or note as defined in the Bills of Exchange Act, 1964, drawn, accepted or issued by a parastatal;~~ (xi) "promissory note" means a promissory note as ~~defined~~ determined in section 87 of the Bills of Exchange Act, 1964; ~~(xii) "trade bill" or "trade note" means a bill or note as defined in the Bills of Exchange Act, 1964, drawn, accepted or issued to provide for the payment for goods; "treasury bill" means a bill drawn by the Government on the Treasury calling on the latter to pay a sum certain in money to a specified person or his order or to bearer, on demand or on a certain specified future date;~~ CURRENT WORDING~~:~~ ""money market instrument" means an instrument creating or acknowledging indebtedness and is defined as:-" SUGGESTED WORDING: ""money market instrument" means an instrument creating or acknowledging indebtedness and includes the like of:-" Consider adding Negotiable Certificates of Deposit (NCDs) to the list.	

28(8) **Definition of "private equity fund"**	"private equity fund" means a managed pool of capital that: (i) has as its main business the making of equity, equity orientated or equity related investments primarily in unlisted companies to earn income and capital gains; and (ii) is not offered to the public as contemplated in the Companies Act, 2008 (No. 71 of 2008); (ASISA) **"private equity fund"** means a managed pool of capital that: (i) has as its main business the making of equity, equity oriented or equity related investments primarily in unlisted companies to earn income and capital gains; and (ii) is not offered to the public as contemplated in the Companies Act, 2008 (No. 71 of 2008);	Clarify by referring to equity. The proposed wording may unintentionally include debt and property funds as property or debt funds invest primarily in unlisted property-owning companies or debt issuances by private companies. Clarify that the intention of the regulations are that a pension fund may invest, at the prescribed limits per private equity fund, where a private equity fund manager may manage a number of private equity funds at one time. The current definition could be interpreted that the prescribed limits apply to the private equity fund manager and not the private equity fund itself. Do not restrict private equity funds from offering to the public. all private equity funds until closed would take money from any investor, and are therefore offered in 'spirit' to the public. Also, there are some listed companies that are so tightly held that they are not effectively open to the public. In all other concerns there is no difference between listed, unlisted and private equity. Even secondary sales are possible with private equity investments. Given the tendency of BEE deals to be done through this mechanism, which allows for the gearing of capital into BEE hands, we find the restriction of private equity counterproductive to development in SA. Narrow the definition by inserting the words *"equity, equity oriented or equity-related"* before the word *"Investments"* in paragraph (1) of the definition of *"Private equity fund".*
28(8) **New definition**	"Long-term Insurance Act" means the Long-term Insurance Act, 1998 (Act No. 52 of 1998).	Define Long-term Insurance Act. The term is used but not defined.

REGULATION 28 SECOND DRAFT COMMENTS TABLE 1

TABLE 1		
ITEM		**COMMENT**
General	CURRENT WORDING: "with a market capitalisation of" SUGGESTED WORDING:"where the market capitalisation of common equity is" CURRENT WORDING 2.1, 3.1, 4.1, 5.1 and 8.1 SUGGESTED WORDING Delete	The numbers 2.1, 3.1, 4.1, 5.1 and 8.1 all seem redundant. It is suggested that it should be deleted. Refer to "market cap of common equity" when referring to market cap. The new Companies Act may/is likely to end the existence of preference shares. *Suggest simply referring (globally, throughout Reg 28) to "all shares, of whatever nature" (could use a definition).*
Item 1	CURRENT WORDING: "1. CASH 1.1 Inside the Republic 1.2 Foreign assets" SUGGESTED WORDING Delete	Combine cash and debt under Debt instruments, where most "cash" will fall under "Debt issued by banks". The distinction between 1Cash and 2 Debt instruments seems redundant. Increase 75% maximum limit in item 2.1(c) to 100% if all debt is grouped together. Please refer to the comments above on the definition of "cash". Consider increasing the limits if deposits are collateralised, as this should provide an additional layer of security. Include cash in the debt category (Section 2).

Item 2: Debt Instruments	Change “listed on an exchange” in 2.1(e)(i) to “subject to the debt listings and disclosure requirements of the exchange”.	Clarify whether the non-government debt instruments cap can be raised to 100% in order to allow for money market only portfolios, fixed deposit investments and capital protected investments with large NCD components for members close to retirement. Consider and clarify whether foreign debt instruments not issued by governments been intentionally left off. Many funds probably already invest in these and you may want to make the treatment of foreign debt relative to foreign equity the same as for local debt and equity. 1) Clarify the differentiation between listed and unlisted debt. The concern in this regard is that asset managers may choose to interpret the status of instrument whose trades are simply reported to the exchange as “listed” and therefore use the 25% limit instead of the correctly more conservative 15%. Leave money market instruments in a separate section in order to ensure that there is no crowding out of investments such as commercial paper not issued or guaranteed by a bank (for example securitisation vehicles). This sector has become an important component of the listed debt market and we are concerned that if a crowding-out effect is evident that it may affect this asset class. Revise and increase issuer/entity limit levels to a more practical level. The alternative for funds would be to endeavour to manage this at mandate level, but this could become very complicated and could incur additional costs. Another possibility is to set the limit with reference to the debt issue, rather than the issuer.
Item 2.1(b)	See **ASISA** table tracked changes	Reword Column to say “Subject to Regulation 28(2)(j)”. Regulation 28(2)(j) states that foreign asset limits are determined by the South African Reserve Bank. Column 2 of item 2.1(b) currently refers to “an amount as prescribed”. Prescribed is in turn defined as “prescribed by the registrar in consultation with the Minister”.
Item 2(b)(ii)	See **ASISA** table tracked changes	Re-think lower allowance for foreign unlisted equity. Having regard to some sophisticated foreign unlisted equity markets there appears to be no *prima facie* reason for this unless it is meant as protection against possible risky emerging markets.

Item 2.1(c)	CURRENT WORDING: “Debt instruments issued or guaranteed by a South African bank against its balance sheet: 75%” SUGGESTED WORDING: “Debt instruments issued or guaranteed by a bank or foreign bank against its balance sheet: 100%” CURRENT WORDING: “Debt instruments issued or guaranteed by a South African bank against its balance sheet” NO SUGGESTED WORDING	Clarify or remove all mention of country from the table so that foreign exposure is limited only by exchange controls. Unclear why (c) refers only to South African banks. Clarify why bank exposure is limited to 75% when both CISCA and current Reg 28 allow 100%. Clarity required on what constitutes debt issued by a bank. For example, does this include subordinated debt, CLNs and structured notes? Consider lowering the limit per issuer (now bank per issuer limit for debt same as that for cash), although this adds more complexity. Consider credit ratings for this section. Perhaps the limits could be 15%, 10% and 5% respectively or some other combination depending on ratings. Consider increasing the limits if debt is collateralised, as this should provide an additional layer of security - a collateralised debt instrument has different risk characteristics to other debt instruments. Increase limit for bank debt from 75% to 100%. Consider the *risk of moral hazard* by permitting 75% in bank paper *only*. 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). Consider 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). Adopt other measure, not market cap. Amend all references to “market capitalisation” throughout Reg 28 to refer to the “Equity market capitalisation”.

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" "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. Debt Instruments issued or guaranteed by companies, excluding debt instruments issued by property companies, which company's shares are listed on an exchange: - **75%**	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%. 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. 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.