THE BANKING ASSOCIATION SOUTH AFRICA

Tel +27 11 645 6700
Fax +27 11 645 6800
P O Box 61674
Marshalltown 2107
www.banking.org.za

3rd Floor Building D
Sunnyside Office Park
32 Princess of Wales Terrace
Parktown 2193

25 May 2022

Loraine van Deventer
Head of Department – Regulatory Liaison
Riverwalk Office Park, Block B
41 Matroosberg Road,
Ashlea Gardens Extension 6,
Pretoria
0181

Doc Ref: SUEH/#315659_1
Your ref: BASA_MCC_UA_01
Direct ☎: 011 645 6707
E-✉: margueritej@banking.org.za

Attention: Loraine.vanDeventer@fsca.co.za

CC: Hannelie Hattingh - hannelie.hattingh@fsca.co.za
CC: Katherine Gibson - katherine.gibson@fsca.co.za
CC: Sue Hatton - sueh@banking.org.za.

Dear Loraine,

SUBJECT: BASA Response to the Unclaimed Assets Discussion Paper from the FSCA

1. BACKGROUND

In late March 2022, BASA received a confidential first draft of the proposed Unclaimed Assets Discussion Paper ("The Paper") from the FSCA. The FSCA went on to advise that the Paper is still subject to further internal and external stakeholder consultation (e.g., SARS and NT), as well as updating the statistical data referenced in the Paper. Comments were requested from BASA and other industry stakeholders by 29 April 2022. BASA requested an extension until 25 May 2022 and was kindly granted this extension by the FSCA.

Recommendations made in the paper High level recommendations made by the FSCA are as follows:-

a) Financial institutions be compelled to transfer all unclaimed assets into a single central unclaimed assets fund, established as a statutory body under the proposed Conduct of Financial Institutions Bill with its own Board of independent Trustees, entrusted with managing the affairs of the fund. The paper notes that for good governance, especially in support of transparency and accountability, it is proposed that the allocated amounts be invested on behalf of the fund through regulated vehicles, like collective investment schemes or alternative investment funds.
b) The Trustees of the unclaimed assets fund be mandated to oversee the effective management of assets, trace beneficiaries, and pay assets to the individuals located.
c) Assets be taxed on entry/transfer by the financial institution into the fund, at the rate that they would have been taxed had they been paid out to the recipient at that time.
d) To establish a centralised data base within the FSCA to assist in the tracing of persons in respect of all industry segments across the financial sector.
e) Whilst the paper notes that valid claims against unclaimed assets should be paid out in perpetuity, it also mentions that the regulator is considering whether permanently untraceable assets should be

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directed towards economic development, through for example infrastructure projects or that the excess funds be invested into initiatives that will have a positive systemic impact e.g., social and environmental initiatives.

2. BASA RESPONSE TO THE FSCA

BASA facilitated the consolidation of the member banks' responses in terms of the FSCA's recommendations for unclaimed assets and the proposed way forward. Such responses have been documented according to the key strategic considerations and consequential impacts of creating and managing a centralised unclaimed assets fund. A detailed response, as per **Annexure A**, has also been made in response to the FSCA's recommendations, key questions and the way forward. Please refer the list of key strategic considerations listed below.

2.1. KEY STRATEGIC CONSIDERATIONS

BASA will respond to the Strategic Considerations as follows:-

i. in terms of establishing a central unclaimed asset fund;
ii. in terms of redistribution of unclaimed assets that are deemed to be untraceable;
iii. in terms of in terms of tax being payable on transfer of monies into the fund;
iv. in terms of retrospective application of any future unclaimed assets legislation.

2.1.1. Strategic Consideration No. 1 – Establishing a Central Unclaimed Asset Fund

The Paper assumes an operating model where the FSCA determines the classification of unclaimed benefits, the management of an unclaimed benefits fund, the tracing of beneficiaries and the ultimate use of residual funds.

a) BASA Response-

BASA does not support the proposal to establish a central unclaimed asset fund managed by either the FSCA or NT, nor for a central unclaimed asset fund to be collectively managed by member Banks, or an industry established unclaimed asset fund. BASA proposes that the institutions to which funds were originally deposited, continue to administer and be responsible for managing these funds according to the contractually agreed terms with the customer.

The paper applies a one-size-fits-all approach to financial assets for purposes of designating when such financial assets are deemed unclaimed. Such an approach does not take cognisance of the following:

i. Inactivity on a bank deposit is neither an indication of dormancy, nor can it be inferred that the deposit is unclaimed. Customers build up savings using bank deposits as a mechanism to do so.
ii. Managing the investment of customer funds is a key area of competence and accountability of financial organisations and as such BASA is of the view that these organisations should remain the accountable entity to manage such funds, including during periods of dormancy.
iii. A number of contractual and practical considerations arise should funds be transferred to a central fund as proposed in the Paper. Some of the recommendations give rise to contradictions in terms of customers' ultimate claims and the value thereof. In particular, the tax treatment as well as the principle of full restitution will be very difficult to achieve once funds have been transferred to a central fund.
iv. That different assets must be treated differently - Whilst inactive accounts may lead to dormancy, it is evident that a large proportion of customers with inactive accounts reactivate these accounts within a reasonable period of time in relation to the purpose and features of the relevant account. Similarly, customers typically hold a number of products and whilst one account may appear to be dormant, the customer relationship may well be active. There are a number of scenarios which need to be unpacked before determining when funds become truly "unclaimed". In the instances where a fixed term investment reaches a maturity date, and in the event that the customer cannot

be contacted, the funds are dealt with in accordance with the contractual terms and conditions, such as reinvestments aligned to the customer's investment mandate.

It is within a member bank's policies to honour valid claims against unclaimed funds in perpetuity for its customers. Should these funds be transferred to a central fund, member banks will expose themselves significant legal and reputational risk, should for any reason the central fund be unable to timeously and to the full value honour a valid claim by a customer.

Member banks rely on their customer agreements, as well as relevant legislation to define their policies for the treatment of Unclaimed Funds. It is unclear where/how member banks' legal liabilities will cease in honouring claims against unclaimed funds upon transfer to a centralised fund, or where an account is reinstated. Should a transfer be made to a centralised fund we seek clarity on the liability of banks in respect of the transferred funds.

Furthermore, there is widespread misappropriation of funds currently taking place in South Africa. BASA is of the view that this risk is best mitigated by spreading it across the organisations to prevent the concentration risk/centralisation risk and fraud risk, as well as institute diverse risk management practices The fraud interception/misappropriation risk is very real notwithstanding the measures outlined in the paper to manage the risk. This places a high onus and accountability on financial institutions to ensure that customer assets are appropriately and independently safeguarded.

b) <u>BASA Proposed Alternative</u>

Given the concerns outlined above, BASA would propose that financial institutions retain custody of the assets for a period of at least 30 years before they are deemed "ultimately unclaimed". Should there be a need for such funds to be transferred into a central fund, such funds should be applied towards the Deposit Insurance Fund or alternatively transferred to the fiscus. The 30-year period as proposed aligns to the proposed amendments to the Pension Fund Act.

It is also proposed that should assets be transferred to a central fund, that financial institutions are indemnified against any claims against such assets, whilst also noting that the implications for other legislative requirements placed on banks needs to be understood and unpacked in detail in those instances where an indemnity may not be possible as the requirements of the banking laws will likely take precedence.

As a further alternative, BASA supports a principle-based Industry approach to managing dormant accounts and unclaimed assets through an industry developed and agreed Conduct Standard.

2.1.2. <u>Strategic Consideration No. 2</u>

a) <u>BASA Response- in terms of redistribution of unclaimed assets</u>

BASA does not support the proposal that the unclaimed funds should be redistributed, as noted in the Paper. Such an approach is in conflict with the principle of treating the customer/beneficiary, to whom the funds actually belong, fairly.

It should also be noted that one cannot *ipso facto* assume that that the social need for redistribution arises from the same communities/geographical areas in which unclaimed assets are derived from. If it is already not possible to locate the owner, how is it proposed that the location of the individual that owns the account be determined, in order to define which location or community the unclaimed asset is to be redistributed to.

The current misappropriation of monies held in the Guardian's Fund has placed an even higher onus and accountability on financial institutions to ensure that customer assets are appropriately and independently safeguarded. It also does not automatically follow that assets that are redistributed to communities where they originated from will necessarily benefit the poor.

b) BASA Proposed Alternative

BASA proposes that an Industry Conduct Standard should place accountability on the financial institution to employ robust means to track and trace customers. This must be done in a way, so as to not hinder the aims of other legislation, which takes cognizance of an individual's data privacy rights and honors POPIA requirements. A fine balance is required in tracing measures to be adopted in an ethical and balanced manner, open and transparent, including being evidenced to Regulatory bodies as may be required.

BASA further proposes that unclaimed assets should be widely socialised in awareness initiatives such as i) broad-based recurring media (television and radio) campaigns whereby the public is made aware of unclaimed benefits, as well as ii) how to claim and keeping their personal details updated, similar to the manner in which the ad-campaign of the Broadcasting Complaints commission is run, making use of both radio and television.

As mentioned above, in the event that funds become unclaimed after a defined period, including after which all reasonable methods have been employed to trace these customers, such funds should rather be applied towards the Deposit Insurance fund or alternatively transferred to the fiscus. This should only happen after a minimum period of 30 years, which aligns with the periods outlined in the Pension Fund Amendment Act.

2.1.3. Strategic Consideration No. 3 - Tax being payable on transfer of monies into the fund

The FSCA proposes that assets be taxed on entry into the fund, at the rate that they would have been taxed had they been paid out to the recipient at that time. No further taxes will be levied on assets once in the fund.

a) BASA Response

As outlined above BASA does not support the concept of transferring unclaimed assets to a central fund. In terms of the specific proposal BASA is of the view that the proposed tax treatment is not practical.

In addition to this, the draft policy position has been developed in the context of retirement funds, where the funds typically pay out only after collecting the necessary tax. This is not the situation for deposits where the declaration and payment of tax is in the hands of the investor. It is not practical to apply the retirement fund mechanism to other products, and for this reason a blanket rule will not work. One cannot apply a "one size fits all" approach given the diversity of products, product specifications and tax implications per product. The scope of the paper is wide which frustrates taxation principles in this approach.

The financial institution is neither the beneficiary of the funds, nor is the financial institution retaining such funds in the scenario proposed. There is thus no basis for the financial institution being obliged to pay or deduct taxes on such funds. It may also not be possible to determine the correct rate or type of tax to be applied, e.g., personal tax, Capital Gains Tax, etc.

Furthermore, if the ultimate beneficial owner successfully claims restitution of the funds as envisaged in the ***FSCA's Recommendation 2***, they would have to pay tax again on claiming same and the financial institution would then be required to pursue the unclaimed benefits funds for tax monies paid previously. Considerations would need to be made in terms of whether interest would be payable on these monies released previously, and also how quickly these refunds would be processed.

BASA submits that this tax treatment is contradictory to statement in the Paper, where it is stated that customer will be able to reclaim the original value of the asset into perpetuity.

b) BASA Proposed Alternative

As we are not supportive of the transfer to a central fund. BASA is of the view that once the funds become "ultimately unclaimed", that same be transferred in its entirety as outlined above.

2.1.4. Strategic Consideration No. 4 - Retrospective application of any future unclaimed assets legislation

a) BASA Response

BASA does not support retrospective application of any future unclaimed assets legislation to funds that are currently unclaimed. Given the full extent of unclaimed assets within the industry, confirmation from FSCA is required on whether existing legislation for other asset classes will continue to remain in force or whether these laws and regulations will be repealed/amended.

b) BASA Proposed Alternative

BASA proposed that any future legislation makes clear that any retrospective application of any future unclaimed assets will not apply to any unclaimed assets currently held on behalf of beneficiaries. Furthermore, BASA proposes that whatever definitions and treatments are agreed as part of this process, that these should only apply prospectively and not retrospectively.

2.2. Unintended Consequences

2.2.1. Impact on funding for the extension of Credit

If the FSCA were to create a central unclaimed assets fund there may be unintended consequences, in terms of an impact of the funding available for the extension of credit. Deposits are used to fund lending activities on a ”multiplier” basis. Should such funds be moved to a central fund, banks will lose the ability to gear funding and credit extension may be curbed as a result of less funding being available.

2.3. BASA’s DETAILED RESPONSE

Please refer overleaf to ***Annexure A*** that encompasses our detailed response to the Paper and consists of the following sections:-

i. ***A.1*** — BASA Response to Part 4 – Chapter 13 – Recommendations
ii. ***A.2*** — BASA Response to Part 4 – Chapter 14 – Key Questions
iii. ***A.3*** — BASA Response to Part 4 – Chapter 15 – Way Forward

3. Summary of BASA’s position to the FSCA

Based on BASA’s Key Strategic Considerations and concerns, as well our proposals and recommendations, BASA is not in support of the creation of a Central Unclaimed Assets Fund.

In addition to the concerns about potential fraud and misappropriation, BASA is of the view, that there also are a number of practical and cost implications stemming from the FSCA proposal, many of which may actually lead to worse outcomes for the customers.

BASA is in support of the following in terms of unclaimed assets:

i) Financial institutions should retain custody of the assets for a period of at least 30 years (the time period stipulated in the proposed amendments to the Pension Funds Act in 2020) before they are transferred, either to the Deposit Insurance Fund or the fiscus.
ii) Tracking and tracing initiatives should remain within the discretion of each bank, rather than be prescribed in terms of having to utilise a tracing agent.
iii) An industry Conduct Standard should be developed and implemented by financial institutions, that amongst other places accountability on the financial institution to employ robust means to track and trace the customer/beneficiaries, including the management of the unclaimed assets in a fair and consistent manner until such time that the customer has been traced.

iv) The recommendation regarding the tax proposal be deleted in its entirety due to the complications it introduces as outlined under paragraph 3.1.3 of this letter.
v) There be no retrospective application of any future unclaimed assets legislation to funds that are currently unclaimed.

We recommend that the FSCA clarify the desirability and validity of the central fund in relation to deposits, with the Prudential Authority and provide feedback thereon to the industry.

BASA further recommends that we continue with our project with the FSCA in terms of the treatment of dormant retail transactional accounts. We propose that these efforts be expanded in order to adequately align on the way forward for unclaimed assets. BASA would welcome working together with the FSCA in terms developing an industry Conduct Standard for unclaimed assets for implementation by financial institutions.

Lastly, please note that BASA is in the process of gathering high-level stats and are planning to submit this to the FSCA by 31 May 2022. Please accept out apologies for any inconvenience caused in this regard.

Kind regards,



Marguerite Jacobs
General Manager: Legislation and Regulatory Oversight
Market Conduct Division

Please refer to ***Annexure A*** overleaf.

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ANNEXURE A

NAME OF PERSON COMPILING SUBMISSION: Marguerite Jacobs and Sue Hatton
ORGANISATION: The Banking Association South Africa (BASA)
SUBMISSION DESCRIPTION: FSCA Discussion Paper – Reducing unclaimed Assets in South Africa – Developing a lost accounts and unclaimed assets framework ("The Paper")
DATE OF SUBMISSION: 25 May 2022

Annexure A consists of the following sections: -

i. A.1 — BASA Response to Part 4 – Chapter 13 – Recommendations
ii. A.2 — BASA Response to Part 4 – Chapter 14 – Key Questions
iii. A.3 — BASA Response to Part 4 – Chapter 15 – Way Forward

Part 4 Chapter 13 – RECOMMENDATIONS			
#	**RECOMMENDATIONS**	**Comment/Problem Statement**	**Proposed Recommendation**
1	**Recommendation 1:** Establish a central unclaimed assets fund to receive and manage unclaimed assets with a primary purpose to trace and pay such assets to the individuals entitled to it	Please refer to **Strategic Consideration No 1** in the BASA Covering Letter on Unclaimed Assets to the FSCA.	Please refer to **Strategic Consideration No 1** in the BASA Covering Letter on Unclaimed Assets to the FSCA.
2	**Recommendation 2:** Provide for full restitution in perpetuity (for the central unclaimed fund)	BASA in principle supports full restitution and reclaim value proposal. In the event that funds remain unclaimed at the financial institution for a period of 30 years, and thereafter, transferred to a fund (please note our comment about transferring the unclaimed asset	BASA is not in favour of unclaimed assets being transferred to a central unclaimed assets fund managed by FSCA or Treasury, but rather that each financial institution should manage its own unclaimed assets process. In the event that funds remain unclaimed at the financial institution for

Part 4 Chapter 13 – RECOMMENDATIONS			
#	**RECOMMENDATIONS**	**Comment/Problem Statement**	**Proposed Recommendation**
		into the Deposit Insurance Fund or Fiscus), we have the following concerns: 1. the charging of fees and tax contradicts full restitution and requires further consideration; 2. reference is made to the use of actuarial calculations to estimate how much of the unclaimed assets can be used to fund community initiatives. However, it is important that the customer's right of recourse and that of the affected financial institution be protected; 3. the tax treatment as well as the principle of full restitution will be very difficult to achieve once funds have been transferred to a fund. A number of contractual and practical considerations arise when funds are transferred to a fund as proposed in the Paper. Some of the recommendations give rise to contradictions in terms of customers' ultimate claims and the value thereof. Please refer to **Strategic Consideration No 1 and No 3** in the BASA Covering Letter on Unclaimed Assets to the FSCA.	a period of 30 years, and thereafter, it could be transferred into the Deposit Insurance Fund or the Fiscus. Subject to the above mentioned, BASA supports the full restitution principle and reclaim value proposal. If, however, a central fund is created then BASA recommends the following:- 1. that as per the following reference *"and adjusted for any fees",* the definition and scope of fees referred to here would need to be clarified in the proposed Industry Conduct Standard; 2. that the proposed Industry Conduct Standard provide explicitly for both the customer's and the financial institution's right of recourse in the event that unclaimed assets are unavailable after redistribution to communities has taken place. Please refer to **Strategic Consideration No 1 and No 3** in the BASA Covering Letter on Unclaimed Assets to the FSCA.
3	**Recommendation 3** Adopt a common escalation system for the identification of unclaimed assets, across all industry segments	BASA does not support this recommendation due to the following reasons:	BASA recommends that this can be achieved through either the financial institution themselves (preferred) or through the development of an Industry Conduct Standard.

Part 4 Chapter 13 – RECOMMENDATIONS			
#	**RECOMMENDATIONS**	**Comment/Problem Statement**	**Proposed Recommendation**
		1. Financial institutions already have a variety of channels through which customers may engage to submit claims in respect of unclaimed assets. 2. Given the widely expanded scope of unclaimed financial assets, the administrative capability of the FSCA to handle customer claims and the available channels through which the regulator would enable this, is an issue of concern.	
	Recommendation 3 i): Step 1: Identify dormant accounts by a specified trigger event	BASA submits that dormancy is "multidimensional" and inactivity is not the only criteria to determine dormancy. For some products, e.g., transactional accounts, inactivity is relevant to determine dormancy, but this is not always the case. Other factors, including but not limited to customer behaviour or choice may well influence the categorisation. It is thus important to note that a dormancy status could be deferred under certain circumstances when considering the overall relationship with a customer. It is also important to note that various product specifications and contractual implications determine these calculations, and that a one size fits all approach cannot be made without taking the workings of each product into account.	BASA recommends that the approach to determining a "dormant account" and "unclaimed asset" be included in an Industry Conduct Standard, which will enable a principles-based, consistent approach whilst allowing flexibility, in terms of the treatment of unclaimed assets. This approach must include an Industry Conduct Standard for the management of dormant accounts and escalation to that of an "unclaimed asset". Trigger events as noted in **BOX 3 of the Paper** should be defined by financial institutions, which should then inform the account classification as either "dormant" or an "unclaimed asset".

Part 4 Chapter 13 – RECOMMENDATIONS			
#	**RECOMMENDATIONS**	**Comment/Problem Statement**	**Proposed Recommendation**
		BASA does not support such a short period of 2 years or 6 months for financial asset to become dormant. The meaning of "no activity" is not clear. In addition, the events that will trigger dormancy, including the type of activity or the lack thereof, differs from bank to bank and will depend on the type of the financial product and customer segment. We do not believe that a single standardised approach should be followed. The work currently underway with BASA and the FSCA, in terms of the dormant accounts working group should be taken into consideration when determining the period before an account becomes dormant.	
	Recommendation 3 ii): **Step 2:** Adopt a common standard for management of dormant accounts and escalation to "lost account" status with "unclaimed assets"	BASA is in support of this initiative to adopt a framework for the management of dormant accounts. 'Lost account' is a newly introduced concept. In the banking industry an account is never 'lost', as the accounts belong to named individuals, it is the contact that becomes difficult when the information recorded is not updated by the customer. BASA supports a common Industry Conduct Standard which will introduce consistency, and which will be principle based. The consultation process in respect of	BASA recommends that an Industry Conduct Standard be developed, which enables a principles-based, consistent approach whilst allowing flexibility to be adopted. This approach must include an Industry Conduct Standard for the management of dormant accounts and escalation to that of an "unclaimed asset" BASA advises that the term "lost account" is superfluous, due to accounts having owners. BASA recommends that this term should not be used as a category in the framework.

Part 4 Chapter 13 – RECOMMENDATIONS			
#	**RECOMMENDATIONS**	**Comment/Problem Statement**	**Proposed Recommendation**
		any future Industry Conduct Standard should allow for wide and meaningful consultation with systemically important financial institutions, industry bodies and regulators.	BASA recommends that we continue with our project with the FSCA in terms of the treatment of dormant retail transactional accounts. Furthermore, BASA proposes that these efforts be expanded in order to adequately align on the way forward for unclaimed assets.
	Recommendation 3 iii): Step 3: Adopt a common standard for treatment of lost accounts and unclaimed assets	BASA would like to advise that in the banking industry an account is never 'lost' as the accounts belong to named individuals, it is the contact that becomes difficult when the information recorded is not updated by the customer. We support the development of a common Industry Conduct Standard which will introduce consistency, and which will be principles based. It is not clear why no contact with the customer is a requirement for an account to be identified as dormant? An account can be categorised as dormant with or without contact with the customer. For example, even after the customer is contacted by the bank, the customer may still fail to transact on the account, or fail to withdraw the fixed deposit, in which case the account may still be identified as dormant.	BASA recommends that the term 'lost account' should not be used. Furthermore, BASA recommends the compilation of a common Industry Conduct Standard, which will introduce consistency, and which will be principle based in terms of the treatment of unclaimed assets. The consultation process in respect of any future Industry Conduct Standard should allow for wide and meaningful consultation with systemically important financial institutions, industry bodies and regulators. This Industry Conduct Standard must allow and take cognisance of fees that are charged, as well as administration costs related to account, as banks should be entitled to charge minimum fees for maintaining the account. In addition, some banks pay interest on credit balances on dormant accounts and it would not make business sense or be fair to pay interest if not allowed to charge fees.

Part 4 Chapter 13 – RECOMMENDATIONS			
#	**RECOMMENDATIONS**	**Comment/Problem Statement**	**Proposed Recommendation**
			BASA recommends that an Industry Conduct Standard be developed, which enables a principles-based, consistent approach whilst allowing flexibility should be adopted.
4	**Recommendation 4:** Identify a minimum threshold for unclaimed assets below which a financial customer will not be actively traced	BASA supports such a threshold in principle. The actual threshold amounts should however be consulted on more widely and agreed upon. Tracing customers can become very expensive. The cost of tracing a customer versus the cost benefit should be taken into consideration. It would not make sense to spend time of call centre agents and appointing a tracing agent to trace a beneficiary with an unclaimed asset of a low value. Excessive costs should not be incurred on low value unclaimed assets.	BASA would further recommend that for low value unclaimed assets, less expensive methods such as SMS and email should be used and not tracing agents.
5	**Recommendation 5:** Reporting by financial institutions should be standardised in terms of regularity and form	BASA supports this in principle. However, each industry and financial product will have its own constraints. A principles-based approach to standardisation is preferable, as this will afford the required flexibility to operate within a defined Framework / Conduct Standard.	BASA would like to recommend that the reporting form should however be automated and not unduly onerous in terms of frequency of such reporting.
6	**Recommendation 6**: Prioritise the tracing of members in high impact retirement funds	BASA would like to seek more clarity on this recommendation, before commenting on it.	

Part 4 Chapter 13 – RECOMMENDATIONS			
#	**RECOMMENDATIONS**	**Comment/Problem Statement**	**Proposed Recommendation**
7	**Recommendation 7:** Consider prioritising the tracing of financial customers of other high impact product providers	BASA would like to seek more clarity on this recommendation, before commenting on it.	
8	**Recommendation 8:** Establish a centralised data base within the FSCA to assist in the tracing of persons in respect of all industry segments across the financial sector	BASA supports the enhancement of the current FSCA search engine to include all unclaimed assets but would like to advise that as per our previous responses, that the funds rather remain with the bank, until the 30-year period has lapsed.	BASA recommends that reporting requirements by the banks to the FSCA, in terms of updating the central registry with unclaimed assets held by the financial institution (for the period of up to 30 years) would need to be further explored.
9	**Recommendation 9:** Coordinated consumer awareness campaign to promote keeping personal details updated	BASA agrees with this in principle. Please also refer to our recommendations in this regard.	BASA agrees with this in principle but, the consumer in terms of the consumer awareness campaign the customers must be directed/redirected to the financial institutions in order to update their personal / contact details.
10	**Recommendation 10:** Redistribute unclaimed assets that are determined to be untraceable, back to the communities from which they derive, to work for the poor	Please refer to **Strategic Consideration No. 2** in the BASA Covering Letter on Unclaimed Assets to the FSCA.	Please refer to **Strategic Consideration No. 2** in the BASA Covering Letter on Unclaimed Assets to the FSCA.
11	**Recommendation 11:** Regulation of Tracing Agents	BASA is in support of the regulation of tracing agents. However, it should be noted that tracing agents provide a wide variety of services, not only in respect of unclaimed assets.	BASA recommends that a tracing framework be established that governs how the tracing of the customer should be done to ensure uniformity

Part 4 Chapter 13 – RECOMMENDATIONS			
#	**RECOMMENDATIONS**	**Comment/Problem Statement**	**Proposed Recommendation**
			This framework should include licensing, processes and procedures for tracing agents The FSCA should, however, not prescribe when and how banks use tracing agents, but this should be at the discretion of the financial institution whether to appoint tracing agents or not.
12	**(Page 42 Footnote 38)** Commentators are requested to comment on whether a single standardised approach is too restrictive, and whether different definitions may be warranted across the industry segments	BASA would like to advise that a single standardised approach across all sectors will prove to be problematic and we are therefore not in favour of a single standardised approach. The products across the various sectors are unique in their structure and features and would therefore require specific treatment within this context, which may not work across sectors and products. Furthermore, this type of an approach may force all sectors to implement measures that would negatively impact their customers in terms of their experience as well as access to funds etc. Many sectors already have well developed processes and may be hindered by such an approach. In essence, each product may require a unique trigger event and timelines specific to that product and it should not be forced as a standard across the sectors.	BASA is of the opinion that due to the nature of financial assets, one standardised approach will not suit all products and will be to the detriment of customers. Different definitions should be applied across different products and industries Stemming from the work currently underway with BASA and the FSCA, in terms of the dormant accounts working group, it is now well established that there are differences in products across the financial sector (based on product rules and customer behaviour and different customer segments). Given this background, BASA recommends that a principles-based approach to standardisation is preferable, as this will afford the required flexibility to operate within a defined Framework / Conduct Standard.

Part 4 Chapter 13 – RECOMMENDATIONS			
#	**RECOMMENDATIONS**	**Comment/Problem Statement**	**Proposed Recommendation**
		THE FSCA proposes in the paper that the definition of unclaimed assets should align with the definition of unclaimed asset in the PFA, hence the 24 months. BASA submits that pension funds and long-term insurance policies differ from transactional banking accounts as follows: 1. once a pension fund asset is dormant/ unclaimed, it is highly unlikely that there will be any further activity in respect of the account, while in the case of a transactional account there is high probability that the customer can transact again on the account after expiry of a period; 2. a large proportion of customers with inactive transactional banking or savings/investment accounts re-activate these accounts within a reasonable period of time. 3. customers open retail banking transactional accounts for a specific purpose and may include not needing to transact on a regular basis on the account e.g., it is used on an infrequent basis and may not constitute the customer's primary transaction account.	Regulatory requirements governing fair treatment towards dormant accounts, circumstances around when an account would be considered dormant, notification requirements and treatment, is preferable. This will give financial institutions the tools needed to apply a uniform approach whilst working within the nuances of the products offered. The same approach should be taken for unclaimed asset as this can also differ across products.

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A.2 — BASA Response to Part 4 – Chapter 14 – Key Questions

Part 4 – Chapter 14 – Key Questions			
14.	**RECOMMENDATIONS**	**Comment/Problem Statement**	**Proposed Recommendation**
14.1	Do you have any comments on the proposed scope of unclaimed assets that must be transferred to the central unclaimed asset fund?	BASA is not in support of the proposal to transfer 'any' unclaimed funds, irrespective of the nature of the asset to a centrally administered fund due to the following reasons: 1. We are of the view that we mitigate the risk by spreading it across the organisations to prevent the concentration risk and fraud risk and institute diverse risk management practices, and or fraud interception/misappropriation risk, notwithstanding the proposed measures to manage the risk. 2. Banks honour valid claims against unclaimed funds perpetually to their customers. Should these funds be transferred to a central fund then banks will expose themselves to significant reputational risk should the central fund for any reason be unable to honour a valid claim by their customers, and should the customer be reverted to a different institution where their funds remain held. 3. Banks rely on their consumer agreements and other relevant regulation to define their accounting policy and treatment of Unclaimed Funds. 4. The relationship between the bank and customer is regulated by the law of contract. Banks cannot unilaterally transfer a customer's funds/assets without the customer's permission. The conduct may	In terms of the Central Unclaimed Asset Fund, BASA is supportive of the creation a central registry where unclaimed funds can be recorded by banks to simplify the search process. This central registry will also facilitate customer communication, education, and awareness for future claims. However, BASA recommends that the actual claim still be done by the customer at the bank where the asset remains held. BASA proposes that only after a defined period of 30 years that an unclaimed asset be transferred by banks to either the Deposit Insurance Fund or the Fiscus. BASA submits that the costs and liability associated with establishing and running the registry must be clearly defined and cannot reside with the banks. In terms of the scope of the unclaimed assets, BASA submits that the scope of the Paper, as it relates to banking products, should be limited to certain financial assets only, for the following reasons: 1. **Ongoing consultation and agreement between BASA and FSCA.** a) BASA has been engaged in workstreams with member Banks to define and agree an

Part 4 – Chapter 14 – Key Questions			
14.	**RECOMMENDATIONS**	**Comment/Problem Statement**	**Proposed Recommendation**
		amount to breach of contract which the bank may be held liable where the funds are transferred to the envisaged Fund. 5. Member banks rely on their customer agreements, as well as relevant legislation to define their policies for the treatment of Unclaimed Funds. It is unclear where/how member banks' legal liabilities will cease in honouring claims against unclaimed funds upon transfer to a centralised fund, or where an account is reinstated. Should a transfer be made to a centralised fund we seek clarity on the liability of banks in respect of the transferred funds. In BASA's response to the FSCA (in February 2021) regarding the Treatment of Transactional Dormant Account, it was agreed that Dormant Transactional Accounts will only apply to dormant accounts of Retail Financial Customers (as defined in the Conduct Standard for Banks) and to Retail Transactional accounts. BASA is of the opinion that the scope of the unclaimed assets is much wider and is not limited to only retail financial customers and retail transactional accounts. In the Paper, a "financial asset" is widely defined in the Paper to include: investments, returns, income, dividends, retirement fund benefits and any other proceeds that become payable to financial customers or their beneficiaries."	approach to dormant retail transactional accounts, following FSCA correspondence to BASA in October 2020. b) Work-stream approaches have been communicated to the FSCA on an ongoing basis, with the following types of financial assets being specifically noted and agreed (in a meeting held between BASA and FSCA on 13 January 2021) as being within the scope of the BASA dormant accounts work-stream: i. includes retail banking transactional accounts only, excluding credit facilities; ii. a retail banking transactional account is defined as:- ✓ an account which is available to a customer/account holder or its nominated authorised parties, ✓ to effect debit or credit transactions from such an account on a frequent basis and which excludes credit facilities c) an industry wide definition must be agreed for what constitutes a dormant account.

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14.	**RECOMMENDATIONS**	**Comment/Problem Statement**	**Proposed Recommendation**
		We submit that the scope of the Paper, as it relates to banking products, should be limited to certain financial assets only. Please refer to BASA's proposed recommendations in the adjacent column.	**2. The contractual relationship is between the customer and the financial institution:** a) "Unclaimed" is not defined in the Paper. The customer-bank-relationship is contractual in nature; therefore, the existence or termination thereof will be determined by the terms and conditions of any account or product or service agreement. Inactive customers are determined based on their underlying product holding and the specific dormancy/inactive rules set out by respective product owners. b) Whilst inactive accounts may lead to dormancy, it is evident that a large proportion of customers with inactive accounts re activate these accounts within a reasonable period of time as it relates to the purpose and features of the relevant account: i. this behaviour is typical for customers with irregular income streams (varied income streams and/or income values); ii. where customers open retail banking transactional accounts for specific purposes, and this may include not needing to transact on a regular basis,

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14.	**RECOMMENDATIONS**	**Comment/Problem Statement**	**Proposed Recommendation**
			e.g., a global account which is used on an infrequent basis and does not constitute the customer's primary transaction account; iii. the introduction of no/low fee retail banking transactional accounts enables customers to retain such accounts without the cost thereof eroding the value/balances over period of inactivity; and iv. credit interest could accrue during periods of inactivity, either in the main retail banking transactional account or a linked savings account. Due to the onerous nature of "re activating" a dormant account (as banks typically require new customer identification and verification (FICA etc.)), BASA recommends that a balance be struck between ensuring customer needs are met (access to bank accounts and ability to transact) and affording protection from a fraud, risk and the erosion of value perspective.
14.2	Are there any assets that the FSCA should consider excluding from the scope of the central unclaimed asset fund?	As stated in BASA's response to **Question 14.1,** we are not in favour of the transfer of unclaimed funds to a centralised unclaimed asset fund.	BASA recommends that other assets such as Pension Funds, Insurance and Investment Schemes governed under their own regulations and industry frameworks

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14.	**RECOMMENDATIONS**	**Comment/Problem Statement**	**Proposed Recommendation**
		Please refer to BASA's proposed recommendation in the adjacent column.	must be dealt separately through their own industry representative bodies. It is our recommendation that assets such pertaining to ASISA remain regulated under the current legislation and that they are excluded from this scope of this initiative."
14.3	Do you have any comments on the proposed definitions of the terms "unclaimed asset", "lost account" and "dormant account"? Are there alternative ways of defining the terms?	**"Dormant Account"** The paper proposes the following definition for a dormant account: "dormant accounts" refers to accounts in which there has been no activity by its owner for a prolonged period. "It is therefore proposed that before account assets be identified as unclaimed, that the account itself is identified as dormant when: a) There has been no activity on the account and no contact with the financial customer, either directly or indirectly through an intermediary, for two years or longer; b) The product has terminated (where relevant) and there remains no activity on the account for a period of 6 months, including that the amounts owing are not claimed; Or whichever comes first".	BASA requires a clear and industry aligned definition around the timeframes and the definition of inactivity. This is to prevent legal liability to Banks stemming from subjective and inconsistent interpretations of the same. BASA submits that the definition should aim to align with the one proposed as part of the continued work of BASA's dormant account working group. It should also be noted that this definition considers a customer to be a retail financial customer as per the definition in the Conduct Standards for Banks. BASA would like to advise that it would be prudent to ensure that this work done by the BASA Dormancy Task Team be concluded prior to continuance of aspects reliant thereon, such as unclaimed assets.

Part 4 – Chapter 14 – Key Questions			
14.	**RECOMMENDATIONS**	**Comment/Problem Statement**	**Proposed Recommendation**
		Unclaimed asset The paper notes that "Unclaimed assets" refers to financial assets where the beneficiary has a right to an asset and either the asset has not been claimed or a payment has not yet been paid, for a period exceeding 24 months. These include assets that are unclaimed, abandoned by, unpaid to financial customers or their beneficiaries by financial institutions, and include unclaimed or unpaid retirement fund benefits, life insurance policies, bank deposits, participatory interests in collective investment schemes and funds held in account by CSDPs for a period exceeding 24 months." **Open-ended / close-ended contract periods** However, the paper later adds (under recommendation 3, step 3) the following: "...should contact not be established (after three years for open-ended contract and the termination date for a closed-ended contract), the unclaimed asset should be paid into the central unclaimed benefit fund (as per **Recommendation 1).** It is thus not clear to us if the unclaimed asset is one which will be designated as such after (a) a two year period of inactivity (b) a 6 month period of inactivity after account termination (iii) a 3 year period of inactivity in the case of an open ended contract or (termination date of a close	

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14.	**RECOMMENDATIONS**	**Comment/Problem Statement**	**Proposed Recommendation**
		ended contract - which could be lesser than a six month period, if, for example - the contract term is 3-months? **"Lost Account"** The paper notes that the term “lost accounts” refers to where the beneficial owner of the account cannot be located. We do not agree that an account should be designated as "lost" merely because the beneficial owner cannot be traced. In terms of “lost accounts”, BASA’s response to **Question 14.4** should be noted, in terms of this being a new concept and not applicable to bank customers. In terms of “unclaimed assets”, BASA’s response to **Question 14.2** should be noted, in terms of specific asset classes that may already be governed under existing regulations. It should also be noted that the terms "beneficiary" and "financial customer" are not defined in the Paper, and this raises the questions whether it is limited to Retail Financial Customers or whether it include any bank customer?	
14.4	What definitions are currently used to describe an unclaimed	BASA advises that there is currently no banking industry definition implemented for these terms. There are	BASA suggests a standard definition for "dormant accounts" and “unclaimed assets".

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14.	**RECOMMENDATIONS**	**Comment/Problem Statement**	**Proposed Recommendation**
	asset, dormant account, lost account?	product specific definitions for dormancy which are based on contract and workings per product specification. As per the work being done by the FSCA/ BASA Task Team on Dormant Retail Transactional Accounts, BASA has proposed a definition of dormant transactional accounts. The next unit of work, the treatment of dormant retail transactional accounts is currently underway with the BASA Task Team.	**"Dormant Account":** In terms of closure of accounts that are classified as dormant, we propose that the period before the account is closed is no longer than 7 years from the time that an account is classified / determined to be dormant. International practice indicates that a 7-year period (as applied in Australia) may represent an appropriate timeframe before dormant accounts are closed. In the UK, there is a maximum 15-year period to move from dormancy to closure of the account; it is important to consider the implications for both customers and banks should a much shorter time frame be prescribed. **"Lost Account":** A "lost account" is a superfluous term and is not used in banking as an account always has an owner and it never lost. BASA submits that the definitions in the Paper should be limited to a "dormant account" and an "unclaimed asset", with both of these latter terms being clearly defined. BASA recommends that an Industry Conduct Standard be developed, which enables a principles-based, consistent approach whilst allowing flexibility should be adopted. Trigger events as noted in **BOX 3 of the Paper** should be defined by financial institutions, which should then

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14.	**RECOMMENDATIONS**	**Comment/Problem Statement**	**Proposed Recommendation**
			inform the account classification as either "dormant" or "unclaimed asset".
14.5	Do you have any comments on the proposed tax treatment?	The FSCA proposes that assets be taxed on entry into the fund, at the rate that they would have been taxed had they been paid out to the recipient at that time. No further taxes will be levied on assets once in the fund. The proposed tax treatment presupposes a transfer to the central fund, which BASA is not in favour of, as outlined above and in **Strategic Consideration No. 1** in the BASA Covering Letter on Unclaimed Assets to the FSCA. In addition to this, BASA does not support the proposal that: *"it is proposed that assets be taxed on entry into the fund, at the rate that they would have been taxed had they been paid out to the recipient at that time. No further taxes will be levied on assets once in the fund."* The position has been developed in the context of retirement funds (where the funds typically pay out only after collecting the necessary tax). This is clearly not the situation for deposits where the declaration and payment of tax is in the hands of the investor. It is not practical to apply the retirement fund mechanism to other products, and for this reason a blanket rule will not work. One cannot apply a "one size fits all" approach given the	As BASA is not supportive of the transfer to a central fund. BASA is of the view that once the funds become "ultimately unclaimed", that same be transferred in its entirely as outlined above. Please refer to **Strategic Consideration No 3** in the BASA Covering Letter on Unclaimed Assets to the FSCA.

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14.	**RECOMMENDATIONS**	**Comment/Problem Statement**	**Proposed Recommendation**
		diversity of products, product specifications and tax implications per product. The scope of the paper is wide which frustrates taxation principles in this approach. The financial institution is neither the beneficiary of the funds, nor is the financial institution retaining such funds in the scenario proposed. There is thus no basis for the financial institution being obliged to pay or deduct taxes on such funds. It may also not be possible to determine the correct rate or type of tax to be applied, e.g., personal tax, Capital Gains Tax etc. Furthermore, if the ultimate beneficial owner successfully claims restitution of the funds as envisaged in the **FSCA's Recommendation 2**, they will have to pay tax again on claiming same and the financial institution would then have to pursue the unclaimed benefits funds for tax monies paid previously. Considerations would need to be made in terms of whether interest would be payable on these monies released previously, and also how quickly these refunds would be processed. BASA submits that this tax treatment is contradictory to statement in the Paper, where it is stated that customer will be able to reclaim the original value of the asset into perpetuity.	

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14.	**RECOMMENDATIONS**	**Comment/Problem Statement**	**Proposed Recommendation**
		In our opinion, the tax treatment proposal introduces undue complexity, as it would be exceptionally difficult to calculate 'the rate that they would have been taxed had they been paid out to the recipient at that time'.	
14.6	What practices are currently used to identify and track unclaimed assets and trace beneficial owners?	Banks use the information in their databases to trace beneficial owners. The methods used to trace the owners differs among the banks, but includes communication by SMS, email, telephone call and normal post. As part of banks' dormancy processes, the banks communicate with their customers to inform them of their dormant account and that the account will be closed Dormancy rules, identification, tracking and communication strategies are aligned with product and contractual specifications, there is not a singular framework. BASA and Member banks are working in a Task Team under the auspices of the FSCA, in determining industry rules for Dormant Retail Transactional Accounts.	BASA supports the approach that guidelines should be issued by the Regulator in the form of a formal Industry Conduct Standard which encourages timeous, proactive steps in order to: 1. enhance tracing procedures and other processes to ensure that customers are aware of and can be linked with their benefits, as to keep unclaimed assets at a minimum level as far as possible; 2. enhance disclosures to customers in respect of the treatment of unclaimed assets; Upfront and ongoing disclosures obligations, similar to those as noted in the Conduct Standard for Banks 3 of 2020, should be included into the Dormant Account/Unclaimed Assets Industry Conduct Standard. The FSCA should, however, not prescribe when and how banks use tracing agents, but this should be at the discretion of the financial institution .

Part 4 – Chapter 14 – Key Questions			
14.	**RECOMMENDATIONS**	**Comment/Problem Statement**	**Proposed Recommendation**
14.7	What practices are currently used to account for unclaimed assets and how are assets treated that are likely to never be claimed or paid?	Banks have internal rules in place that provide guidance on how to deal with dormant accounts and unclaimed assets. Some banks take funds to income statement after a defined period and in other cases the funds remain in the customer's account. Banks further rely on consumer agreements, and other relevant legislation to define their accounting policy and treatment of Unclaimed Asset Funds. Banks honour the claimant's right to the unclaimed funds.	
14.8	Do you have any comments on the proposed threshold that should apply to unclaimed assets for it not to be feasible for tracing purposes?	BASA is supportive of thresholds in principle, particularly for small amounts as it may not be feasible to spend money on tracing a beneficiary for a nominal amount. We agree that the cost of search and ongoing maintenance should be taken into consideration when determining thresholds.	BASA recommends that the actual threshold amounts should however be consulted on more widely and agreed upon.
14.9	Do you have any comments on the treatment of non-cash assets e.g.? a) Should it be converted to cash before transfer to the central unclaimed asset fund?	BASA advises that it does not support a Central Unclaimed Asset Fund. Given this, however, BASA submits that the treatment of cash assets is not applicable to Transactional Banking, Savings and Investments as these assets are deemed as cash already.	

Part 4 – Chapter 14 – Key Questions			
14.	**RECOMMENDATIONS**	**Comment/Problem Statement**	**Proposed Recommendation**
	b) If yes to (a), are there (i) any assets that cannot be converted to cash; and (ii) any other significant impacts if non-cash assets are converted to cash upon transfer to the central unclaimed asset fund?	BASA further submits that share schemes tend to hold shares and cash (dividend receipts). The management of scrip and the associated corporate events can be administratively intensive; hence the proposal would be that all non-cash assets be first sold and converted to cash prior to submitting the assets – after the 30-year period to the Deposit Insurance Fund or the Fiscus. This does have CGT Tax implications, but it will reduce the subsequent administration costs. BBBEE schemes and Trust deeds may dictate how assets are to be dealt with and these would need to be complied with. Where silent, some overarching legislation may be required Even though BASA is not in support of the Central Fund, it is our understanding is that a monetary amount would be transferred into the central unclaimed fund as opposed to assets.	
14.10	Do you have any comments on the proposed full restitution principle and reclaim value?	BASA supports the full restitution principle and reclaim value proposal. After the 30-year period, once the funds are transferred to the Deposit Insurance Fund or the Fiscus, there should be no further liability for the bank.	

Part 4 – Chapter 14 – Key Questions			
14.	**RECOMMENDATIONS**	**Comment/Problem Statement**	**Proposed Recommendation**
		BASA submits that any related tax treatment is contradictory to statement in the Paper, where it is stated that customer will be able to reclaim the original value of the asset into perpetuity. There is a returns implication on capital gains or losses. The claimant also has right in perpetuity. **Recommendation 2** recommends that the value of the unclaimed asset should be adjusted for any fees. It is not clear what fees are referred to and clarity should be obtained.	
14.11	Do you have any comments on the proposed regulation of tracing agents?	BASA is in support of the regulation of tracing agents. However, it should be noted that tracing agents provide a wide variety of services, not only in respect of unclaimed assets.	BASA recommends that a tracing framework be established that governs how the tracing of the customer should be done to ensure uniformity. This framework should include licensing, processes and procedures for tracing agents The FSCA should, however, not prescribe when and how banks use tracing agents, but this should be at the discretion of the financial institution.
14.12	Do you have any comments on the proposed redistribution of the unclaimed funds?	BASA is not in support of funds being transferred into a central unclaimed assets fund managed by the FSCA or National Treasury.	If the funds remain unclaimed at the relevant bank for the recommended 30-year period, the funds are then transferred to either the Deposit Insurance Fund or the Fiscus. BASA recommends that serious consideration be

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14.	**RECOMMENDATIONS**	**Comment/Problem Statement**	**Proposed Recommendation**
		Following on from this, BASA does not support the proposal that the unclaimed funds should be redistributed as noted in the Paper. Such an approach is in conflict with the principle of treating the customer / beneficiary fairly to whom the funds actually belong. Furthermore, BASA submits that there is widespread misappropriation of funds currently taking place in the government of South Africa. BASA is therefore of the view that unclaimed funds should not be transferred to a central fund managed by FSCA or National Treasury, but that unclaimed funds should be managed by each financial institution where the investment was made. If each bank manages its own unclaimed assets the risk is mitigated by spreading it across the organisations to prevent the concentration risk / centralisation risk and fraud risk, as well as instituting diverse risk management practices, and or fraud interception / misappropriation risk, notwithstanding the proposed measures to manage the risk. This places a high onus and accountability on financial institutions to ensure that customer assets are appropriately and independently safeguarded.	given to the management, administration, audit and control of any future central fund. Proper oversight must be implemented if managed in a central fund.
14.13	Any other comments by Banks?	1. The administrative capability of the FSCA to handle customer claims and the available channels through which the regulator would enable this, given the widely expanded scope of unclaimed financial assets,	

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14.	**RECOMMENDATIONS**	**Comment/Problem Statement**	**Proposed Recommendation**
		is an issue of concern. It should also be noted that financial institutions already have a variety of channels through which customers may engage to submit claims in respect of unclaimed assets. 2. After the recommended 30-year period has expired and once an account balance has been transferred to the Fund, will banks be permitted to then close an account, or would the account still need to remain open with a nil balance? 3. The proposed Industry Conduct Standard should consider extending the scope of unclaimed assets to include retailers who in some instances hold wallet facilities (sponsored/white labelled wallets) with banking institutions. 4. The definition of dormant account should also take into consideration that there are various factors that influence the frequency with which a customer would interact with a financial product, a customer may wish to build up funds for use at a later stage (this time period could be years). The escalation of an account to the status of "dormant" could act against the customer's intention. 5. How would foreign currency be transferred to be sent to the central fund? Would the expectation be that the foreign currency be converted at the spot rate on the day and then have the funds transferred to the central fund?	

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14.	**RECOMMENDATIONS**	**Comment/Problem Statement**	**Proposed Recommendation**
		6. Clarification is required on whether Trust Funds are included herein because currently dormancy rules do not apply to trust funds. This would also be dependent on any applicable legislation on trusts.	

A.3 — BASA Response to Part 4 – Chapter 15 – Way Forward

Part 4 – Chapter 15 – Way Forward			
15.	**WAY FORWARD**	**Comment/Problem Statement**	**Proposed Recommendation**
15.1	Determine the current criteria and timeframes for the classification of assets or accounts as unclaimed, dormant or lost;	BASA supports the continuation of the development of an Industry Conduct Standard for dormant retail transactional accounts as is currently in progress under the auspices of the FSCA / BASA Dormant Accounts Task Team.	BASA supports the approach that guidelines should be issued by the Regulator in the form of a formal Industry Conduct Standard However, the reporting would be done by the banks to the FSCA and not to BASA. Please also note our comments under **Recommendation 14.3**.
15.2	Consider and confirm the full extent of unclaimed assets based on the industry determined criteria where these exist, and the new proposed criteria;	BASA does not support this recommendation. Please refer to our comments noted in response to **Question 14.1.**	BASA submits that the approach to determining a "dormant account" and "unclaimed asset" must be aligned to an Industry standard, be principles-based, and provide for a consistent approach whilst allowing flexibility.

Part 4 – Chapter 15 – Way Forward			
15.	**WAY FORWARD**	**Comment/Problem Statement**	**Proposed Recommendation**
			Trigger events as noted in **BOX 3 of the Paper** should be defined by financial institutions, which should then inform the account classification as either "dormant" or "unclaimed asset".
15.3	Support development of an aligned legal definition of unclaimed assets and benefits across sectors, where possible;	BASA submits that the Paper applies a one-size-fits-all approach to financial assets for purposes of designating when such financial assets are deemed unclaimed. Such an approach does not take cognisance of the following: 1. Inactivity on a bank deposit is neither an indication of dormancy, nor can it be inferred that the deposit is unclaimed. Customers build up savings using bank deposits as a mechanism to do so. 2. Managing the investment of customer funds is a key area of competence and accountability of financial organisations and as such we believe that these organisations should remain the accountable body for managing such funds, including during periods of dormancy. 3. That different assets are treated differently - Whilst inactive accounts may lead to dormancy, it is evident that a large proportion of customers with inactive accounts reactivate these accounts within a reasonable period of time as it relates to the purpose and features of the relevant account. Similarly, customers typically hold a number of	BASA submits that the approach to determining a "dormant account" and "unclaimed asset" must be aligned to an Industry Conduct Standard Trigger events as noted in **BOX 3 of the Paper** should be defined by financial institutions, which should then inform the account classification as either "dormant" or "unclaimed asset"

Part 4 – Chapter 15 – Way Forward			
15.	**WAY FORWARD**	**Comment/Problem Statement**	**Proposed Recommendation**
		products and whilst one account may appear to be dormant, the customer relationship could well be active. There are several scenarios which need to be unpacked before determining when funds are "unclaimed". In the instances where a fixed term investment reaches a maturity date, and in the event that the customer cannot be contacted, the funds are dealt with in accordance with the contractual terms and conditions, such as reinvestments aligned to the customer's investment mandate. Unclaimed assets and unclaimed benefits have been used interchangeably in this Paper, but there is no definition for an "Unclaimed Benefit".	
15.4	Support establishment of a uniform timeframe for the classification of assets / benefits as unclaimed;	We submit that dormancy / unclaimed asset is "multidimensional" and should not only take inactivity into account. Other factors, including but not limited to customer behaviour or choice may well influence the categorisation. It is thus important to note that a dormancy status could be deferred under certain circumstances when considering the overall relationship with a customer. This should be considered further, as a standardised approach will not work across all sectors. This would	BASA recommends that the approach to determining a "dormant account" and "unclaimed asset" must be aligned to an Industry Conduct Standard. Trigger events as noted in **BOX 3 of the Paper** should be defined by financial institutions, which should then inform the account classification as either "dormant" or "unclaimed asset", including the timeframe. Please also note our comments & proposed recommendations under **Recommendation 14.3**.

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15.	**WAY FORWARD**	**Comment/Problem Statement**	**Proposed Recommendation**
		include uniform timeframes, potentially definitions as well as treatment of such unclaimed assets. Examples: By imposing a standardised defined dormancy period across all sectors, the following issues may arise: 1. Entry level banking markets comprising part time workers, irregular earners do not always earn a steady income and may therefore make erratic deposits and withdrawals due to the fact that they deal mostly with cash on an irregular basis. By imposing such a period, it forces such customers to perform transactions to keep their account active. 2. The time frames could have significant impact on the market and may lead to customers feeling it more difficult to enter the banking system due to the various requirements imposed on them to maintain a bank account. This goes against the spirit of financial inclusion of the South African population. 3. The bank incurs costs for providing a transactional service irrespective of the customer's usage. These costs include, amongst others, those incurred for data storage, systems processing, security, infrastructure, insurance. This essentially passes onto the customer and needs to be a	

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15.	**WAY FORWARD**	**Comment/Problem Statement**	**Proposed Recommendation**
		prioritised consideration when setting standards in this regard.	
15.5	Issue regulatory requirements regarding the management, tracing of individuals and payment of unclaimed assets and benefits to persons entitled to it; and	Since BASA is not in support of the transfer of funds to a central fund, we believe this recommendation could be accommodated by setting guidelines for Banks to reinvest a portion of unclaimed funds to social development. The extent of fees billed by tracing agents and the cost of same is potentially fairly costly. BASA therefore submits that a future dormant account/unclaimed assets Conduct Standard should require the Financial Institution to enhance tracing procedures, but that the mechanism to do so should remain at the discretion of the financial institution. By way of example, referencing to customer activity in terms of other active products that the beneficiary may hold with the financial institution.	BASA therefore submits that an alternative would be to require Financial Institutions to enhance tracing mechanisms as noted in **Clause 8.3.3** of the Paper and repeated here for easy reference: 1. Pro-active contacting of customers before the maturity of the product to inform them about the maturity date and what action is required; 2. Reminder processes to follow-up where contact has not been established or no action has been taken by the customer; 3. Verify customer contact details with verification entities like, credit bureau(s), Astute, SearchWorx XDS and ITC 4. Move to more human intervention through implementation of KYC (know your customer) to ensure regular interaction and update of information; 5. Dedicated teams have been established to trace unclaimed beneficiaries; 6. Sharing of information between financial institutions which was very successful, however was stopped with the implementation of the POPI Act;

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15.	**WAY FORWARD**	**Comment/Problem Statement**	**Proposed Recommendation**
15.6	Confirm the threshold in respect of small amounts which is not feasible for tracing purposes.	Enhanced tracking and tracing need to be put in place under the auspices of the Industry Conduct Standard which may include appointing tracing agents.	BASA also recommends that an Industry Conduct Standard should be compiled to facilitate and enhance tracking and tracing, which may include appointing tracing agents. BASA recommends that the actual threshold amounts should however be consulted on more widely and agreed upon. Please refer to our responses in **Question 14.8**.
15.7	Any other comments by Banks?	**1. Single Standardised Approach will not work.** A single standardised approach across all sectors will prove to be problematic. The products across the various sectors are unique in their structure and features and would therefore require specific treatment within this context that may not work across sectors and products. This type of an approach may force all sectors to implement measures that would negatively impact customers in terms of their experience as well as access to funds etc. many sectors already have well developed processes and may be hindered by such an approach. In essence, each product may require a unique trigger event and timelines specific to that product and it should not be forced as a standard across the sectors.	
	Any other comments by Banks? continued	**2. Impact on funding for the extension of Credit** If the FSCA were to create a central unclaimed assets fund there may be unintended consequences, in terms	

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15.	**WAY FORWARD**	**Comment/Problem Statement**	**Proposed Recommendation**
		of an impact of the funding available for the extension of credit. Deposits are used to fund lending activities on a" multiplier" basis. Should such funds be moved to a central fund, banks will lose the ability to gear funding and credit extension may be curbed as a result of less funding being available	
		3. No Retrospective Application BASA does not support retrospective application of any future unclaimed assets legislation to funds that are currently unclaimed. Given the full extent of unclaimed assets within the industry, feedback from FSCA is required on whether existing legislation for other asset classes will continue to remain in force or whether these laws and regulations will be repealed/amended.	BASA proposed that any future legislation makes clear that any retrospective application of any future unclaimed assets will not apply to any unclaimed assets currently held on behalf of beneficiaries. Furthermore, BASA proposes that whatever definitions and treatments are agreed as part of this process, that these should only apply prospectively and not retrospectively. Please refer to **Strategic Consideration No 4** in the BASA Covering Letter on Unclaimed Assets to the FSCA.