



Financial Sector  
Conduct Authority

# Discussion Items

1. Statistics
2. Expected publications
3. Interesting legal cases

# The Team



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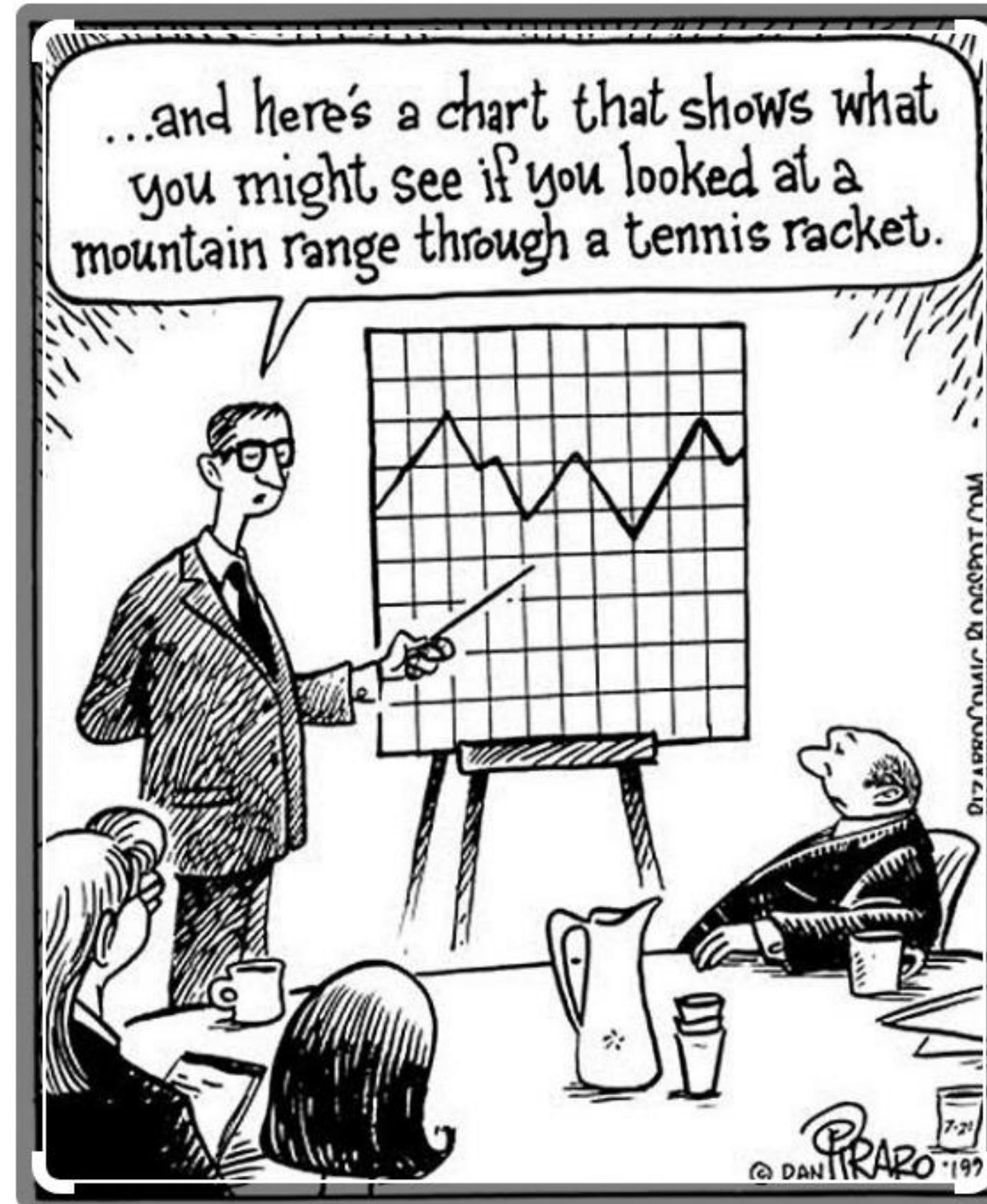
Corlia Loock



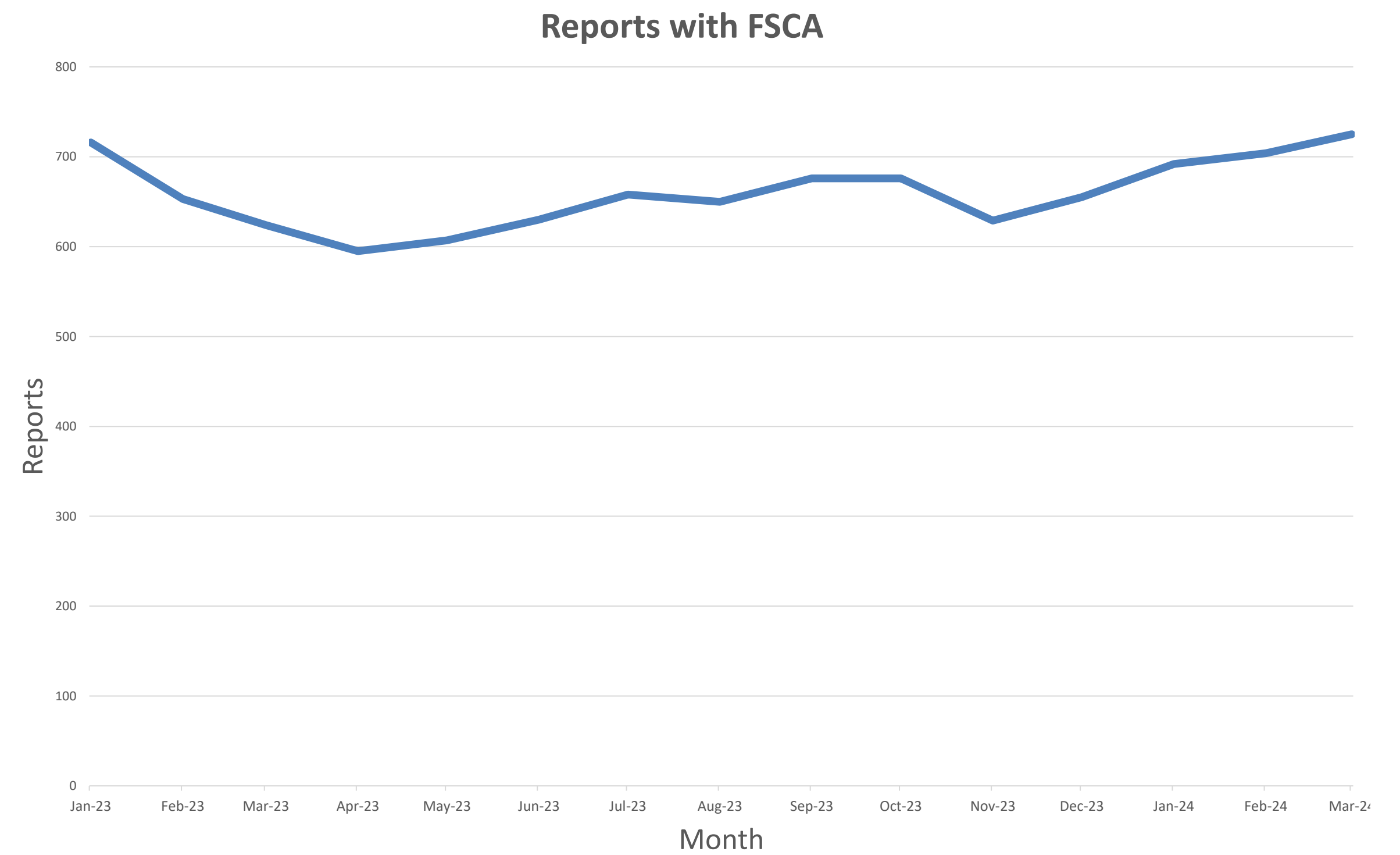
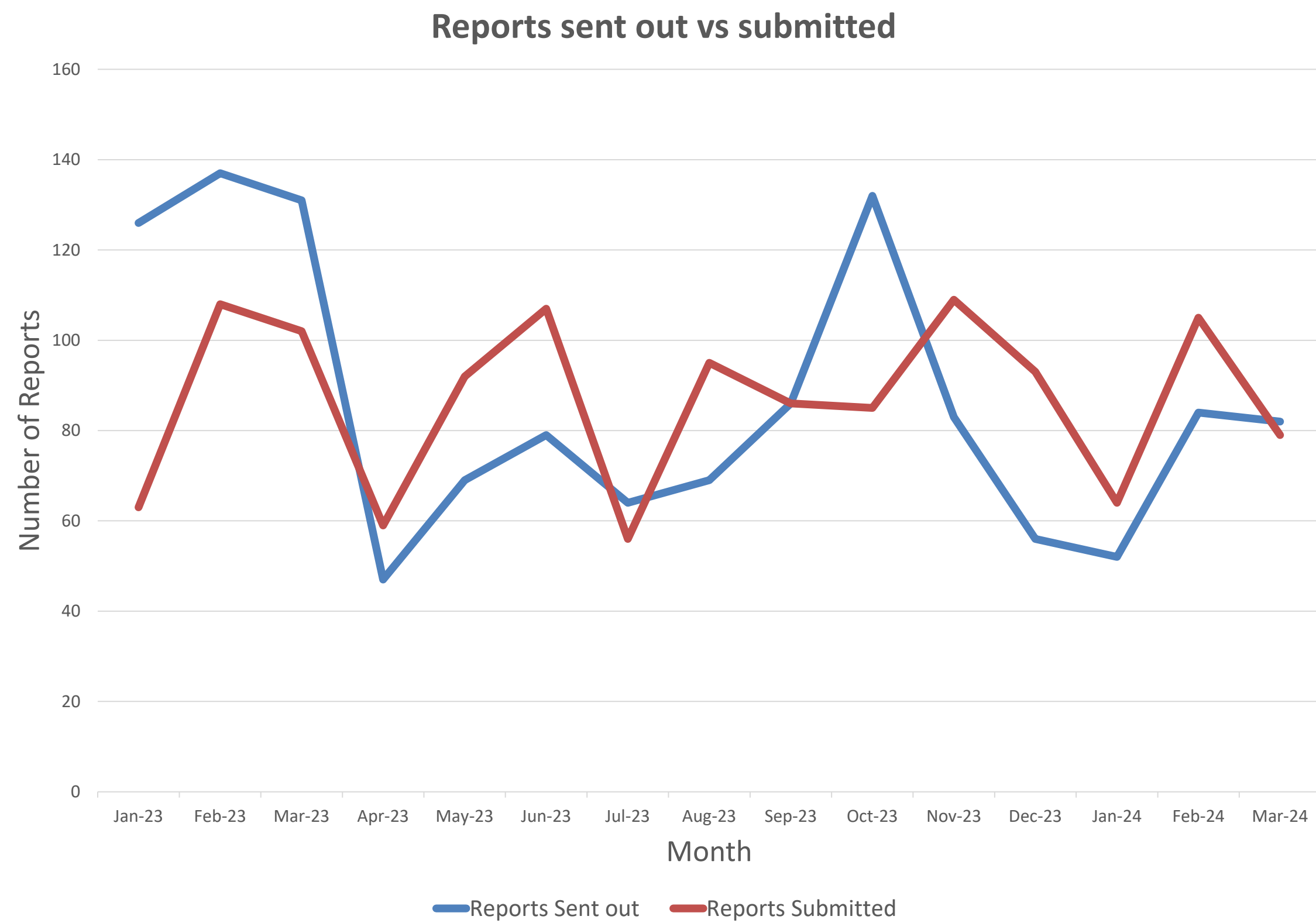
Daniel Nowack



# Statistics



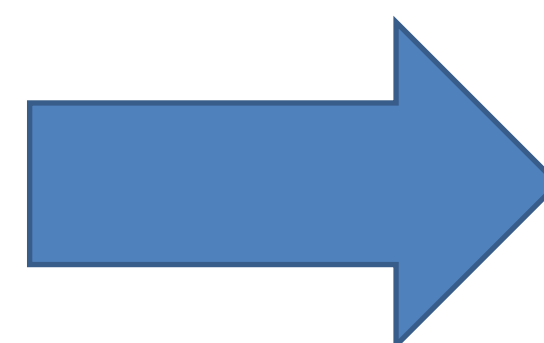
# Reports with FSCA



# Reports with FSCA

12 April 2023

| Valuation Reports  | Grand Total |
|--------------------|-------------|
| <b>2021</b>        | <b>38</b>   |
| <b>2022</b>        | <b>356</b>  |
| Jan                | 6           |
| Feb                | 5           |
| Mar                | 19          |
| Apr                | 7           |
| May                | 18          |
| Jun                | 20          |
| Jul                | 31          |
| Aug                | 48          |
| Sep                | 29          |
| Oct                | 42          |
| Nov                | 45          |
| Dec                | 86          |
| <b>2023</b>        | <b>272</b>  |
| Jan                | 41          |
| Feb                | 97          |
| Mar                | 116         |
| Apr                | 18          |
| <b>Grand Total</b> | <b>666</b>  |



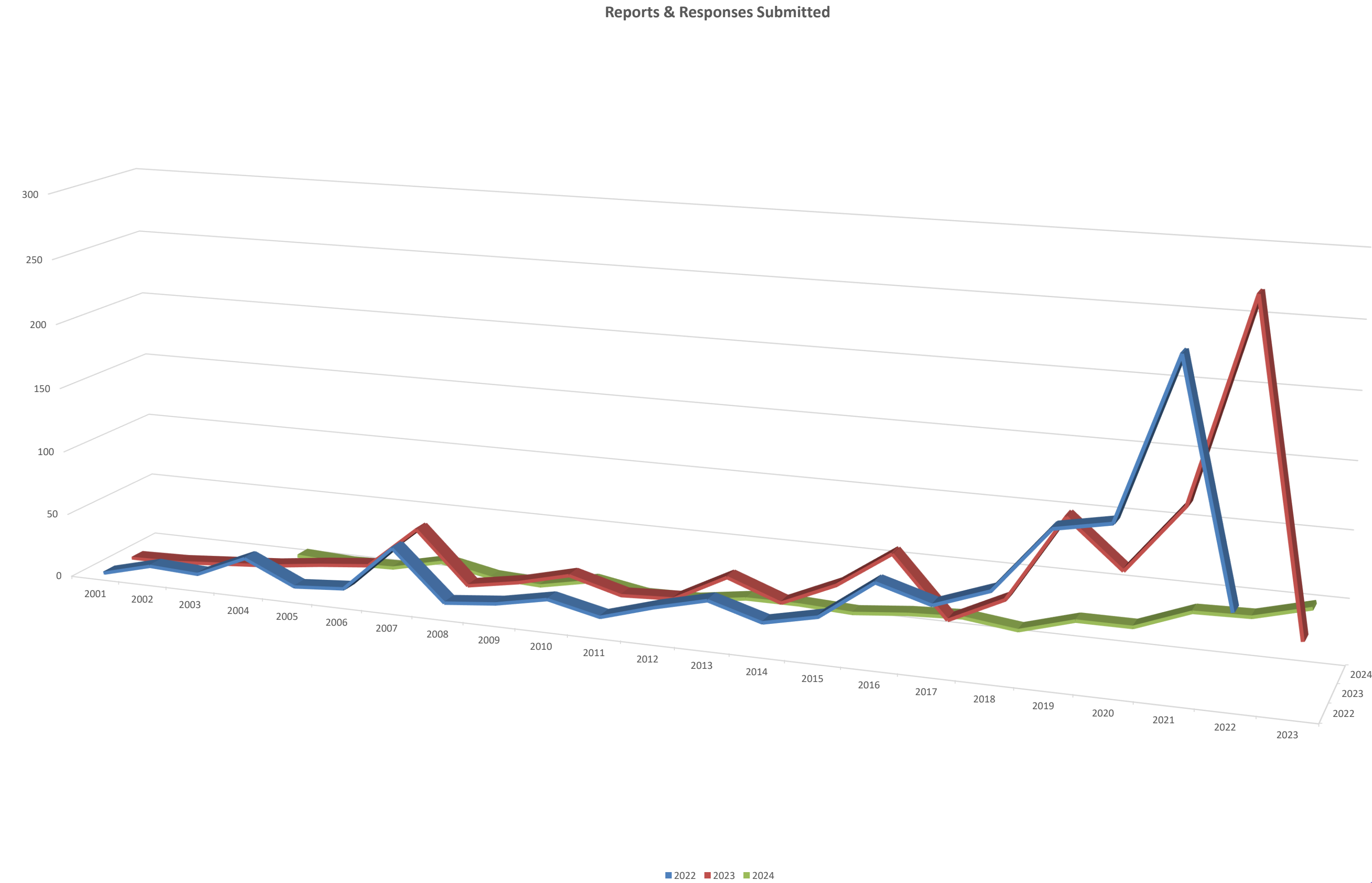
17 April 2024

| Valuation Reports  | Grand Total |
|--------------------|-------------|
| <b>2023</b>        | <b>475</b>  |
| Apr                | 23          |
| May                | 39          |
| Jun                | 63          |
| Jul                | 25          |
| Aug                | 43          |
| Sep                | 52          |
| Oct                | 54          |
| Nov                | 91          |
| Dec                | 85          |
| <b>2024</b>        | <b>254</b>  |
| Jan                | 57          |
| Feb                | 94          |
| Mar                | 78          |
| Apr                | 25          |
| <b>Grand Total</b> | <b>729</b>  |



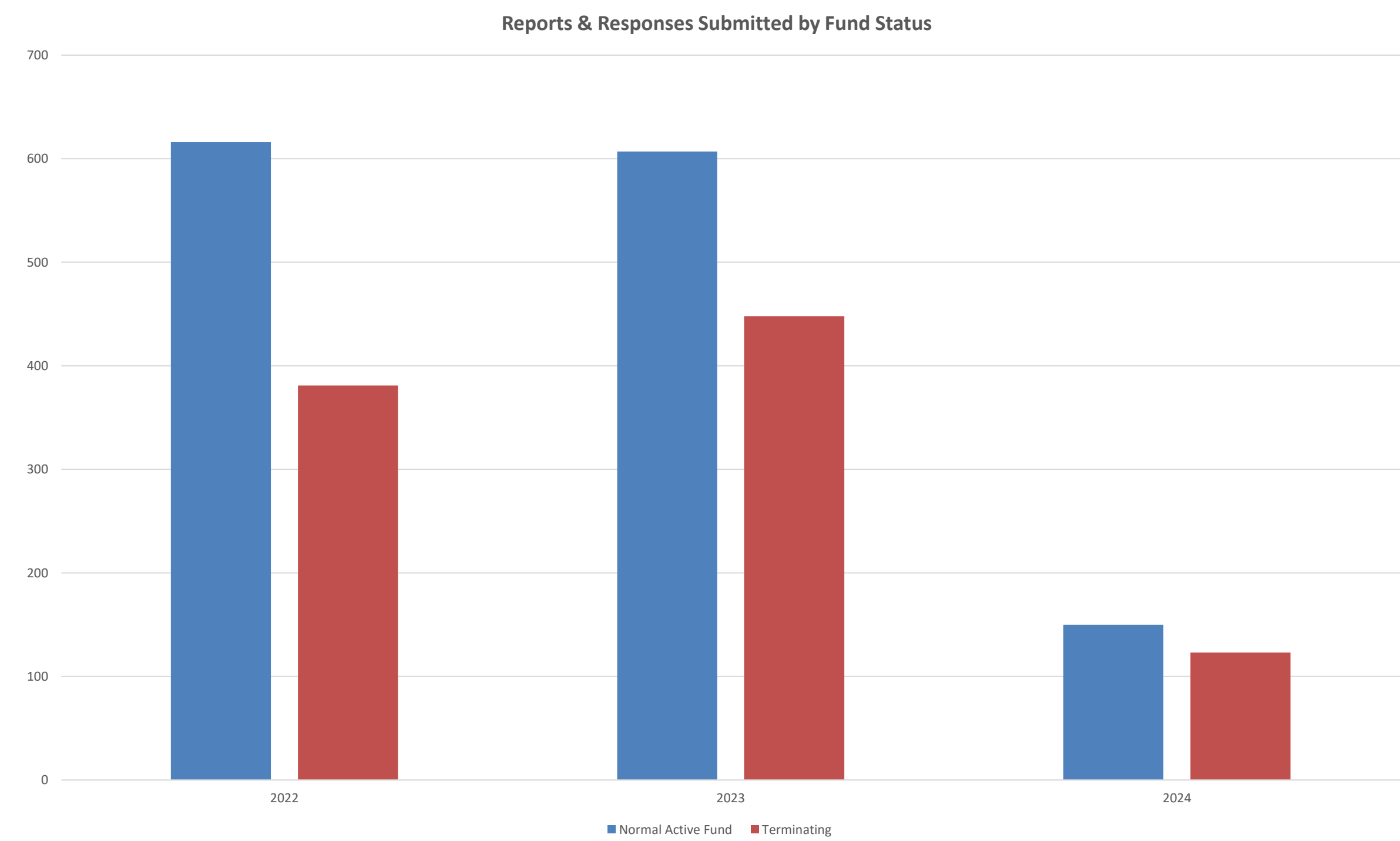
# Submissions

| Submission Date |                               |      |      |       |      |
|-----------------|-------------------------------|------|------|-------|------|
| Effective Date  | Reports & Responses Submitted |      |      |       |      |
|                 | 2022                          | 2023 | 2024 | Total |      |
|                 | 2001                          | 1    | 1    |       | 2    |
|                 | 2002                          | 11   | 2    |       | 13   |
|                 | 2003                          | 9    | 5    |       | 14   |
|                 | 2004                          | 26   | 8    | 4     | 38   |
|                 | 2005                          | 8    | 13   | 2     | 23   |
|                 | 2006                          | 11   | 17   | 3     | 31   |
|                 | 2007                          | 47   | 50   | 12    | 109  |
|                 | 2008                          | 9    | 10   | 4     | 23   |
|                 | 2009                          | 13   | 17   | 2     | 32   |
|                 | 2010                          | 21   | 27   | 10    | 58   |
|                 | 2011                          | 12   | 16   | 3     | 31   |
|                 | 2012                          | 24   | 18   | 4     | 46   |
|                 | 2013                          | 34   | 39   | 10    | 83   |
|                 | 2014                          | 22   | 24   | 10    | 56   |
|                 | 2015                          | 31   | 42   | 8     | 81   |
|                 | 2016                          | 61   | 70   | 12    | 143  |
|                 | 2017                          | 49   | 25   | 14    | 88   |
|                 | 2018                          | 64   | 45   | 9     | 118  |
|                 | 2019                          | 113  | 110  | 21    | 244  |
|                 | 2020                          | 121  | 75   | 21    | 217  |
|                 | 2021                          | 242  | 126  | 37    | 405  |
|                 | 2022                          | 67   | 277  | 38    | 382  |
|                 | 2023                          |      | 38   | 49    | 87   |
|                 | Total                         | 997  | 1055 | 273   | 2325 |



# Submissions

| Reports & Responses Submitted |      |      |      |       |
|-------------------------------|------|------|------|-------|
|                               | 2022 | 2023 | 2024 | Total |
| Normal Active Fund            | 616  | 607  | 150  | 1373  |
| Terminating                   | 381  | 448  | 123  | 952   |
| Total                         | 997  | 1055 | 273  | 2325  |



# Surplus submissions

| Section 15B Submissions | 2022 | 2023 | 2024 |
|-------------------------|------|------|------|
| Start                   | 16   | 17   | 62   |
| Received                | 43   | 126  | 35   |
| Completed               | 42   | 81   | 48   |
| Remaining               | 17   | 62   | 49   |

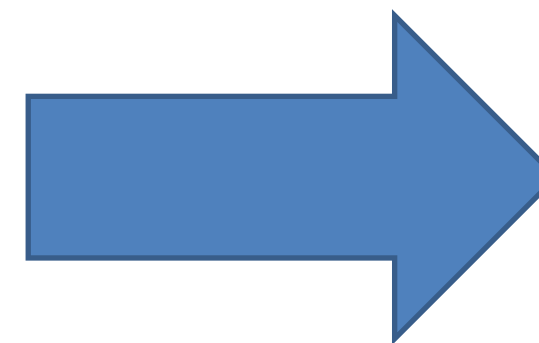


# Awaiting responses

12 April 2023

Query Letter Date

| Query Letter Sent | Number     |
|-------------------|------------|
| 2007              | 1          |
| 2009              | 2          |
| 2010              | 2          |
| 2011              | 5          |
| 2012              | 2          |
| 2013              | 4          |
| 2014              | 13         |
| 2015              | 27         |
| 2016              | 34         |
| 2017              | 47         |
| 2018              | 65         |
| 2019              | 61         |
| 2020              | 92         |
| 2021              | 30         |
| 2022              | 254        |
| 2023              | 141        |
| <b>Total</b>      | <b>780</b> |



17 April 2024

| FSCA Letter Sent | Query      | Intention to reject | Total      |
|------------------|------------|---------------------|------------|
| 2007             | 1          |                     | 1          |
| 2009             | 2          |                     | 2          |
| 2010             | 2          |                     | 2          |
| 2011             | 5          |                     | 5          |
| 2012             | 2          |                     | 2          |
| 2013             | 4          |                     | 4          |
| 2014             | 12         |                     | 12         |
| 2015             | 25         |                     | 25         |
| 2016             | 29         |                     | 29         |
| 2017             | 45         |                     | 45         |
| 2018             | 47         |                     | 47         |
| 2019             | 53         |                     | 53         |
| 2020             | 65         |                     | 65         |
| 2021             | 22         |                     | 22         |
| 2022             | 179        |                     | 179        |
| 2023             | 173        | 11                  | 184        |
| 2024             | 104        | 3                   | 107        |
| <b>Total</b>     | <b>770</b> | <b>14</b>           | <b>784</b> |

|                 |           |
|-----------------|-----------|
| <b>Rejected</b> | <b>28</b> |
|-----------------|-----------|



# Awaiting responses

| Valuation Date | Query | Intention to reject | Total |
|----------------|-------|---------------------|-------|
| 2002           | 2     | 1                   | 3     |
| 2003           | 6     |                     | 6     |
| 2004           | 10    |                     | 10    |
| 2005           | 17    |                     | 17    |
| 2006           | 24    |                     | 24    |
| 2007           | 53    |                     | 53    |
| 2008           | 16    |                     | 16    |
| 2009           | 29    |                     | 29    |
| 2010           | 46    |                     | 46    |
| 2011           | 27    |                     | 27    |
| 2012           | 42    | 2                   | 44    |
| 2013           | 69    |                     | 69    |
| 2014           | 25    |                     | 25    |
| 2015           | 51    | 2                   | 53    |
| 2016           | 68    |                     | 68    |
| 2017           | 33    |                     | 33    |
| 2018           | 61    | 3                   | 64    |
| 2019           | 67    | 1                   | 68    |
| 2020           | 35    | 1                   | 36    |
| 2021           | 54    | 2                   | 56    |
| 2022           | 34    | 2                   | 36    |
| 2023           | 1     |                     | 1     |
| Total          | 770   | 14                  | 784   |



# Section 18

| Section 18 Submissions | 2022 | 2023 | 2024 |
|------------------------|------|------|------|
| Start                  | 13   | 11   | 4    |
| Received               | 25   | 13   | 1    |
| Completed              | 27   | 20   | 2    |
| Remaining              | 11   | 4    | 3    |



# Exemptions

| Exemption Submissions | 2022 | 2023 | 2024 |
|-----------------------|------|------|------|
| Start                 | 0    | 72   | 101  |
| Received              | 380  | 1084 | 196  |
| Completed             | 308  | 1055 | 150  |
| Remaining             | 72   | 101  | 147  |



| Submission Date         | 2022 | 2023 | 2024 | Total |
|-------------------------|------|------|------|-------|
| Effective Date          |      |      |      |       |
| Unreasonable Data Entry | 2    | 14   | 86   | 102   |
| 2003                    |      | 1    |      | 1     |
| 2004                    | 1    | 1    |      | 2     |
| 2005                    |      | 2    |      | 2     |
| 2006                    | 6    | 29   |      | 35    |
| 2007                    | 8    | 48   | 4    | 60    |
| 2008                    |      | 1    | 2    | 3     |
| 2009                    | 8    | 32   | 2    | 42    |
| 2010                    | 15   | 71   | 10   | 96    |
| 2011                    |      | 6    | 2    | 8     |
| 2012                    | 9    | 32   | 3    | 44    |
| 2013                    | 15   | 69   | 7    | 91    |
| 2014                    |      | 11   | 1    | 12    |
| 2015                    | 6    | 11   | 3    | 20    |
| 2016                    | 16   | 63   | 8    | 87    |
| 2017                    | 3    | 11   |      | 14    |
| 2018                    | 7    | 20   | 3    | 30    |
| 2019                    | 26   | 76   | 10   | 112   |
| 2020                    | 14   | 25   | 2    | 41    |
| 2021                    | 104  | 65   | 2    | 171   |
| 2022                    | 136  | 380  | 18   | 534   |
| 2023                    | 4    | 111  | 25   | 140   |
| 2024                    |      | 5    | 8    | 13    |
| Total                   | 380  | 1084 | 196  | 1660  |



# Extension

| Extension Submissions | 2022 | 2023 | 2024 |
|-----------------------|------|------|------|
| Start                 | 25   | 2    | 9    |
| Received              | 78   | 90   | 22   |
| Completed             | 101  | 83   | 13   |
| Remaining             | 2    | 9    | 18   |



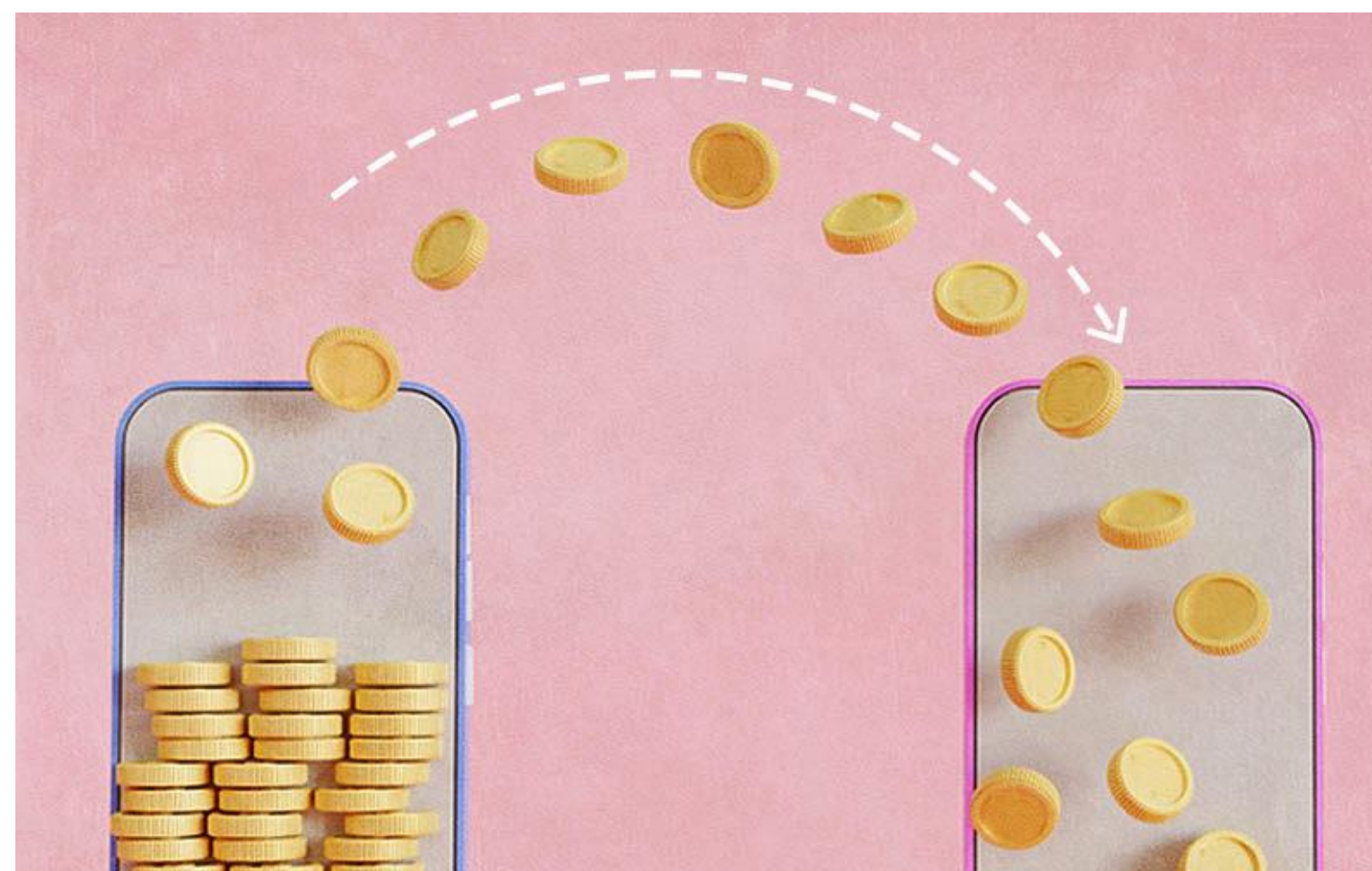
# Valuator Appointments

| Valuator Appointment Submissions | 2022 | 2023 | 2024 |
|----------------------------------|------|------|------|
| Start                            | 5    | 12   | 2    |
| Received                         | 147  | 204  | 23   |
| Completed                        | 140  | 214  | 23   |
| Remaining                        | 12   | 2    | 2    |



# Section 15E Applications

| Section 15E Submissions | 2022 | 2023 | 2024 |
|-------------------------|------|------|------|
| Start                   | 13   | 16   | 14   |
| Received                | 45   | 72   | 20   |
| Completed               | 42   | 74   | 17   |
| Remaining               | 16   | 14   | 17   |



# Future standards



# Legislative Update

## 1. Revenue Laws Amendment Bill

- Two-Pot system (1 September 2024)

➤ Timeline: Awaiting president signature

## 2. Pension Funds Amendment Bill

- Definitions : Savings withdrawal benefit
- Savings, retirement and vested components
- Possible deductions

➤ Timeline: Under reconsideration by Parliament

# Legislative Update

## 3. Conduct of Financial Institutions Bill

- Protect financial customers
- Promote trust and confidence in the financial sector
- Promote transformation
- Financial stability

➤ Timeline: to be tabled in Parliament before the 2024 national elections

# Standards

## 4. Joint Standard – Governance Requirements for Financial Institutions

- Corporate governance and culture framework
- Timeline: Feedback deadline of 15 May 2024, after which expert technical input will be sought

## 5. Living Annuity Conduct Standard

- Regulation 39(3)(a) : prescribing the conditions and drawdown levels
- Timeline: Feedback received February 2023, no further developments

# Regulation 28

## 6. Regulation 28 Quarterly Reporting

- Modernise reporting standards

➤ Timeline: Consultation process ongoing

## 7. Communication 19 of 2023

Clarification regarding format for submission of annual financial statements and Regulation 28 Quarterly Reporting Returns

- Continue using Board Notice 77 while Regulatory Reporting Standard not yet finalised

➤ Timeline: Published on 19 July 2023

# Conduct Standards

## 8. Benefit Projections Conduct Standard

- Requirement to provide benefit projections

➤ Timeline: Feedback received to be considered

## 9. Conduct Standard 1 of 2022

Requirements related to the Payment of Pension Fund Contributions

- To address the shortcomings in Regulation 33

➤ Timeline: Published on 19 August 2022

# Communication Notice

## 10. Communication 14 of 2023

### Conditions for Investment in Derivatives Instruments for Pension Funds

- Conditions in respect of the use of derivative instruments

➤ Timeline: published on 11 May 2023

# Interesting legal cases



# Mafoke Security Patrols (Pty) Ltd v Moeketsi and others – Gauteng Division

**Legal Issue:** Mr Moeketsi did not receive his full withdrawal benefit

## **Pension Fund Adjudicator:**

- Failure to timeously register him as member to the fund and pay the corresponding contributions
- Determination:
  - Arrear contributions
  - late payment interest due (LPI)
- Writ of execution by Mr Moeketsi

## **High Court:** Employer's argument:

1. Judgment creditor
2. LPI was investment income to the fund - Regulation 33(7)

## ➤ Determination:

1. Mr Moeketsi was a judgment creditor – can execute the writ against the employer for arrear contributions
2. LPI payable to the fund

# Municipal Workers Retirement Fund v Umzimkhulu Local Municipality and Others

**Legal issue:** Failed to comply with Section 13A(1) and (2) of the PFA

## **Supreme Court of Appeal ordered:**

- Employer to provide the required contribution schedules
- Could seek an order for payment of arrear contributions and penalty interest
- ✓ The municipality paid in the arrear contributions **but not the late payment interest**



## **High Court:**

- Employer's argument: Judgment debt – In terms of Prescribed Rate of Interest Act and not PFA
  - Fund: The PFA prescribes the rate of interest and the 'in duplum' rule not applicable
- Determination: Fund to pay the capital amount calculated at the rate prescribed in section 13A(7) of the PFA



# Seloana v Government Pension Administration Agency and Others

**Legal issue:** Validity of rule 14.6 of the Government Employees Pension Fund (GEPF) Rules

- Discriminates against women in a polygamous marriage

## Background:

- Mr Seloana was a member of the GEPF and in a polygamous marriage. He passed away
- The two spouses claimed their pension fund benefits and received equal share. One of the spouses passed away.
- Remaining spouse request: spousal pension to be recalculated to receive the full benefit. – Declined by the fund

## High Court:

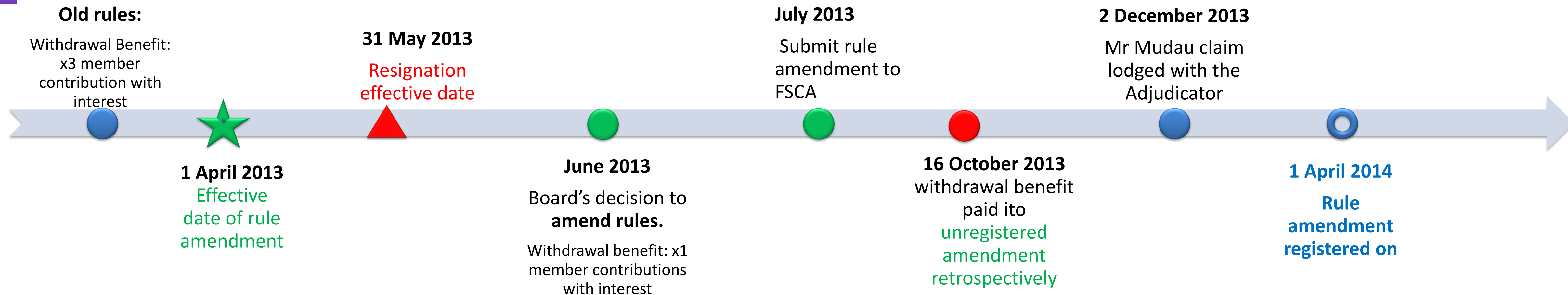
- Determine if there are unfair discrimination
- Differentiation has legitimate purpose.
- Rules attempt to provide equal benefits to these two categories of marriages.



- Determination: Application dismissed – rules do not discriminate unfairly to women in polygamous marriages



# Mudau v Municipal Employees Pension Fund and Others



- **Legal issue:** Mr Mudau's withdrawal benefit was paid in terms of an unregistered amendment, applied retrospectively prior to registration
- **Pension Fund Adjudicator:**
  - Determination: in favour of Mr Mudau – retrospective amendment cannot be applied to benefits already accrued before registered
- **Supreme Court of Appeal** – In favour of the fund: Amendment could be applied retroactively once registered.
- **Constitutional Court:**
  - Fund Rules
  - Fiduciary duties
  - Claim lodged 2 December 2013 – fix date of law applicable
  - Retroactive vs retrospective
- Determination:
  - Pension Fund may not apply retrospective rule amendment prior to registration.
  - Mr Mudau's withdrawal benefit -paid in line with the rules registered when his employment terminated (old rules) including interest.

# Textile Open Provident Fund v FSCA

**Legal issue:** Valuation exemption application was rejected

- Reason: significant reserves in annual financial statements

**Background:** Issues for reconsideration:

- FSCA's discretion to grant or refuse valuation exemption
- If FSCA exercised its discretion correctly and legal basis to interfere

**Tribunal:**

- Word “may” in section 2(5) of the PFA and BN 59 – permissive and not peremptory
- Valuation report - report on the fund's **financial condition** through an investigation done by the valuator

➤ Determination: FSCA exercised its discretion properly





Thank you

