FINANCIAL SERVICES BOARD

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CIRCULAR PF NO. 101

(To all self-administered funds, all fund administrators, and the administering insurers of funds exempted in terms of section 2(3)(a) of the Act)

REVISIONS TO TRANSFERS PREVIOUSLY APPROVED IN TERMS OF SECTION 14 OF THE PENSION FUNDS ACT, 1956

The Registrar may, in the light of legal opinion recently sought, re-open previous section 14 transfers for a second "agterskot" payment, where the boards of management of the transferor fund and the transferee fund agree that the previous section 14 transfer requires amendment. Such an "agterskot" payment could flow from transferor fund to transferee fund, or vice versa. This Circular sets out the conditions required for the approval of such an "agterskot" payment in 1 below.

1. The Registrar will consider a revision to one or more transfers previously approved in terms of section 14, provided the following conditions are fulfilled:

   1.1 The boards of management must be empowered to authorise the transfer in terms of the Rules of the transferor and transferee funds.

   1.2 The application should refer back to one or more previous transfers of liabilities and the corresponding assets, approved in terms of section 14, noting at least the transferor and transferee fund names and Registrar's reference numbers, the number/s of members, the amount/s transferred and the effective dates of the previous transfer/s.

   1.3 The valuator may use his or her discretion as to the format of the application, provided the information requested in this circular is included in the application.

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1.4 The valuator to the transferor fund must write a report motivating the second payment. This report must relate to the circumstances which applied in the transferor fund at the time of the original transfer. Essentially the valuator will be justifying why, with the benefit of hindsight, a revised quantum of assets and / or liabilities should have been transferred.

1.5 The adjustment to the quantum of assets originally transferred should be rolled up to the date of the application using the investment return earned in the fund from which the payment will be made over the appropriate period.

2. The Registrar wishes to draw boards of management and administrators' attention to several related matters:

2.1 An agreement between the transferor fund and the transferee fund to pay a share of surplus in the transferor fund across to the transferee fund will be accepted by the Registrar as reasonable grounds for such an "agterskot" payment, provided:

2.1.1 such surplus, adjusted in respect of investment return across the intervening period between the effective date of the original transfer and the date of the current transaction, existed at the date of the original transfer; and

2.1.2 the proportion of the total surplus given at the effective date of the original transfer should not exceed the ratio of the value of the liabilities transferred to the value of the total liabilities in the transferor fund at the effective date of the original application, immediately prior to transfer. In order to determine this proportion, the surplus being paid in terms of this transaction should be adjusted back to the original effective date using the investment return across the period between the effective date of the original transfer and the date of the current transaction. (The Registrar may accept payment of a different proportion of surplus if a satisfactory motivation is supplied in terms of 2.2. below.)

A copy of such agreement between the transferor fund and the transferee fund should be supplied with the application for the "agterskot" payment.

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2.2 Where the proportionate share of surplus, taking account of both the payment in this transaction adjusted as described in 2.1.1 and any share of surplus given as part of the original transaction, exceeds the ratio of the value of the liabilities transferred to the value of the total liabilities in the transferor fund at the effective date of the original application, immediately prior to transfer, the valuator should justify why it is reasonable for the desired share of the surplus to be paid across to the transferee fund.

2.3 The Registrar will not accept experience within the transferee fund/s, subsequent to the effective date of transfer, as justification for the "agterskot" payment. The justification should relate only to the circumstances of the transferor fund at the date of the original application/s.

2.4 Application should be made within three years of the date on which the previous application in terms of section 14 was approved, provided that the Registrar may extend such period on such conditions as he or she may determine.

2.5 Certain events, such as the demutualisations of Sanlam and Old Mutual, are causing funds to receive additional assets at a date considerably later than the date when the funds' entitlement to receive the additional assets was established.

Transfers could have been applied for, or could have been approved, where the effective date of the transfer was later than the date on which the entitlement of the transferor fund to receive additional assets was established, but before the transferor fund received the additional assets.

Where the transfer documentation has stated that the rate of return earned on the assets of the transferor fund will be used to adjust the amount to be transferred from the effective date on which transfer occurred to the date when approval is granted, such an increase in value forms part of the rate of return, and is therefore included within the approval already granted under section 14. The additional payment due to the transferee fund should then be treated as the correction of an error (see 3.1 below) and will not need further approval in terms of section 14.

Where the transfer application has specified a rate of return other than the rate earned by the fund, and the trustees of the transferor fund wish to transfer a portion of the increase in value to the transferee fund, the valuator must follow the procedure outlined in 1 above for an "agterskot" payment equal to the increase in value attributable to the members previously transferred.

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3. This Circular is not intended to deal with two associated circumstances, namely:

   3.1 a situation in which the assets and / or liabilities transferred differ from the amounts approved in terms of the certificate granted in terms of section 14 and the funds wish to correct the amounts transferred in accordance with such certificate. (The trustees should proceed without delay to correct the transfer.)

   3.2 a situation in which an additional liability is created in the transferor fund and this liability together with the corresponding assets are transferred to the transferee fund. (This would be the subject of a new application in terms of section 14, and would not refer to any previous transfer.)

REGISTRAR OF PENSION FUNDS

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