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CIRCULAR PF NO. 104

(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)

UTILISATION BY RETIREMENT FUNDS OF THE FREE SHARES ACQUIRED THROUGH DEMUTUALISATION

Following the issue of free shares by the Old Mutual and Sanlam as a result of their demutualisation, some retirement fund boards of management are apparently contemplating passing these shares, or the cash obtained from sale of the shares, directly to the members of the funds.

The Registrar wishes to draw the attention of boards of management to the following:

1. The free shares have been obtained as a result of the investment of the fund=s assets, or the placement of insurance, with a mutual society which has demutualised. The free shares belong to the fund.

2. Members and pensioners have no entitlement to free shares allocated to the fund.

3. The value of the free shares increases the value of the fund=s investments. The board of management determines how this additional value should be applied. They could improve benefits. They could reduce contributions. They could use the additional value to subsidise future costs.

In whatever way they choose to utilise the additional value, the board of management must exercise their fiduciary duties towards all the stakeholders in the fund, and the board of management must work within the powers given to them in terms of the rules. After deciding how they want to use the additional value, the board of management must, therefore, check that the rules allow them to use the moneys in this way. If the rules do not permit their desired action, the board of management should seek amendment of the rules and only apply the additional value once the Registrar, and any other party which might be required to approve rule changes before they are valid, have approved the amendment.

4. A fund can only pay benefits.

Members only become entitled to a benefit when they leave employment. The board of management cannot, therefore, pass the free shares to active members, or pay them money in lieu of such shares, or reduce housing loans made by the fund to members.

Similarly, the board of management cannot reduce any loans made to the employer.

5. The board of management may apply some of the additional value for the benefit of pensioners and of former members.

In the case of pensioners, existing pensions can be increased or the appropriate amount could be paid out as a lump sum, or some combination of the two, provided the rules permit such payments. In the case of former members who have already been paid a benefit, the additional amount can be paid out as an addition to the benefit previously paid. Any such amount paid out will be taxed.

In the case of former members who transferred to another retirement fund, the appropriate addition to their transfer value should be paid across after application in terms of Circular PF101 for a certificate in terms of section 14 of the Pension Funds Act.

REGISTRAR OF PENSION FUNDS