
Governance Issues in Relation to Section 13B Benefit Administrators

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Roles of Board and Administrator

PF 130

- board's function is to exercise oversight responsibility;
- board is responsible for ensuring that administrator carries out its responsibilities;
- board must therefore be satisfied that the administrator can do the job in terms of personnel, administrative platform, etc;
- board must also be happy with the terms of the administrator's PI cover;

Roles of Board and Administrator (cont)

- board must ensure that there is enough detail in the SLA to hold the administrator to its obligations;
- proper reporting is essential;
- board must monitor and ensure no conflicts of interest exist in respect of the administrator;
- board must ensure that administrator's remuneration is reasonable;

Roles of Board and Administrator (cont)

Administrators risks are not necessarily fund risks, but the fund has an interest in ensuring that the administrators risks are properly managed by the administrator.

Administrator as Agent

- administrator is agent of the fund;
but the buck stops with the board which the members will hold responsible if the administrator fails;
- not the function of the board to run the administrator's business, but if the administrator's problems become severe then those problems become the fund's problems.

Where are the Problem Areas of Benefit Administration?

- data management;
- transition from one administrative platform to another;
- adequacy of reporting to board;
- communication to fund membership;
- conflicts of interest.

What can the Board do when the Problems become Severe?

- check PI cover of both the fund and the administrator;
- escalate the issues to higher management;
- approach the Registrar;
- withhold remuneration;
- transfer to another administrator;

What can the Board do when the Problems become Severe? (cont)

- beating up the administrator can be counter-productive;
- may need to call in outside experts to report independently to the board about the administrator's problems (auditor, data expert, etc);
- lack of skills in administrator can be a major challenge;
- do not under-estimate the impact on fund membership of a change of administrators, as well as the cost, time involved and delays resulting from change of administrator.

SLA

- Services must be adequately specified with timelines;
- Termination provisions can be contentious : note Board Notice 24 of 2002 (90 day termination clause);
- Avoid penalty provisions – ownership of fund data must be clearly stated, no lien by administrator;
- Arbitration provisions?
- Disclosure requirements
 - *Complaints*
 - *Communication with Regulator*
 - *Other benefits received through one-stop shop arrangement*

SLA (cont)

- Limitation of liability issues;
- Indemnity required by administrator:

“Administrator is only liable to a member if any unlawful act or omission by the administrator causes a loss to that member for which the administrator is liable in law. To the extent that the administrator is held responsible for an act or omission which has so caused a loss for which the administrator is not liable in law then the fund indemnifies and holds the administrator harmless against any loss which it (the administrator) suffers as a result.”
- Have an independent person review the SLA, never simply accept what the administrator proposes.



A paradigm shift
IN CONSUMER PROTECTION

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