



FINANCIAL SERVICES BOARD

PENSION LAWYERS ASSOCIATION CONFERENCE

26 February 2018

UPDATE, OUTLOOK AND PRIORITIES FROM THE DEPUTY EXECUTIVE OFFICER OF RETIREMENT FUNDS

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- Thank you very much for the invitation
- I must be exceptionally careful what I say here given my changed status
- I want to do something different, and not only provide the regular update from the FSB
- Instead I want to talk broadly about the outlook and priorities in the short, medium and long term, and how we can help each other as industry and regulator to achieve the best outcomes for our members.

1. A New and Enhanced Approach to supervising retirement funds

- Started with two broad reforms initiated by the National Treasury in 2011
 - Twin Peaks – Financial Sector Regulation Act now - A safer financial sector to Serve south Africa better
 - Retirement reforms – how to get the best outcome for members – chapter 5 called “Safeguarding pensioners”, under Policy Priority 2, called ‘Consumer protection and market conduct’
- The new Twin Peaks regime requires supervisors to be intensive, pro-active and pre-emptive
- In the same year, 2011, the FSB also released the Roadmap for TCF – Treating Customers Fairly

- TCF cuts across the FSB's work and is arguably one of the cornerstones, if not the cornerstone, of the market conduct strategy for the FSB
- TCF is all about achieving the right outcomes for consumers of financial products and services
- And in fact, if we think carefully, any regulatory approach, whether prudential or market conduct, is meant to protect consumers and ultimately support financial stability
- Late last year we issued for commentary TCF guidelines for retirement funds, and the need for them to establish a member complaints system and reporting to the supervisor.
- Now working on imbedding TCF in the pensions department and industry

2. Regulation 28

- Talking about Reg 28, we saw how it protected funds from potential excessive exposures to Steinhoff
- As we presented to Parliament this year, the funds which reported to us were well within the various single equity and bond issuer limits of 15 and 10%
- Our calculations show that individual fund exposures to Steinhoff following its share price crash on 8 December 2017, ranged between 0.01% and 6.04%
- The decline/"loss" in the rand value of the investments/exposures were around R18 billion ≈ 1% of total assets of funds which responded
- It could possibly have been worse without Reg 28
- However, laws, standards and rules are only effective if there is someone monitoring and enforcing them. So credit must also go to the entire FSB Pension team for regularly monitoring compliance.
- So too must credit go to the Board of Trustees, who ultimately are responsible for overseeing their investment mandates
- Financial returns are important as an early warning system
- We are also updating our system to receive cash flow statements regularly, either monthly or after every two months. We think cash flow statements can provide a very useful early-warning system to detect improper use of member's funds, especially where there are inexplicable movements of large sums of money
- It does not mean we are perfect as the regulator. And in fact, it is when we consider ourselves as perfect and faultless that faults, accidents and mishaps creep in.

- I would actually even go further and say that, when we look into history, right up to ancient times, human beings have not changed much in the last 4000 years.
- We are still driven by the same negative emotions, whether they be of anger, greed, domination, fear of the unknown, over-confidence, and one of the worst of them all, arrogance
 - It is actually tempting to amend the bible and make arrogance an explicit sin

Let me ruffle things a bit;

3. Litigation

- The retirement fund industry is exceptionally litigious!
- As of this year, there at least 10 cases which involve the Registrar of Pension Funds
- Separate from this cases, there are 16 curatorships and liquidations
- On a serious note
 - The problem with so much litigation is that it is ultimately the members who pay, and lawyers do not come cheap
 - A number of these cases are really frivolous
 - As lawyers, you should also consider what is in the best interest or outcome of your clients, who are the funds and ultimately the members
 - You must guide and help them in terms of what is the best outcome, instead of us taking each other to court all the time
 - I would like an approach whereby as regulator and industry, we can resolve our differences without having to always go to court
 - Of course, where there is a justified need to approach the court, then it will be understandable
 - This is not to take away or limit our right to seek legal recourse. I appreciate that we have all fought hard for these rights – but rights must also not be abused.
- We will also be compiling a panel of s26 trustees, statutory managers and curators to enable fair representation and ensure that only fit and proper people are used. The public will be invited to submit their CVs for consideration

4. Compliance and benefits of Consolidation

- The late submission of financial returns is really a problem

- As accountants and auditors will tell you, whenever financial statements are not issued, finalised or submitted in time, it is a sign that there could be problems with the entity
- There are currently funds which have not submitted returns for almost 18 months after they have been due. 18 months is a long time for things to go wrong
- It is for this reason, and the need for us to take a much more robust approach to supervision, that we will be proposing to Parliament that the period to submit financial returns be reduced from the current 6 to 3 months.
- So for example, if financial year end is March, then we would want to receive our returns by June.
- We further want all funds to submit audited returns
- As you would be aware, funds with assets below R6 million are audit exempt. Of course, this would raise costs, and therefore small funds must seriously consider consolidating and joining umbrella funds
- This consolidation is important for also the many municipal retirement funds – around 40 - they can certainly benefit from consolidation which will enable economies of scale, and better governance.
- As the regulator, fewer funds will also make our lives much easier, our roles much effective and efficient – we have and will always have limited resources to supervise
- Treasury has now instructed the FSB to come up with a plan to reduce the current number of 1651 active funds to around 200

5. Trustee Issues and governance

- The requirement that trustee, after appointment, must acquire relevant training and skilling has been in the PFA but not activated for the last couple years
- To assist trustees by equipping them with at least basic tools to be able to discharge their duties properly, we will be making the FSB trustee toolkit mandatory for trustees this year, and will continuously enhance it to make it time relevant.
- To support better governance of funds, we will also be making King IV compulsory for trustees and funds this year
- Late last year we issued a directive on undesirable practice, which seeks to prohibit improper incentives, gifts and kickbacks to trustees. We have received the industry comments and are currently processing them. We are aiming to have a final directive by the first half of this year.

- Although we are not averse to trustee remuneration by the fund for serving as trustees, there are some horror stories in the industry, where trustees are earning multimillions for their services, and allegedly exaggerate the frequency of meetings and their services
- We are therefore considering moral suasion to discourage exorbitant fees being paid to trustees, including possible caps.
- Again, we must always remind ourselves that whatever services the funds pay, the source of income is from members' savings.

6. The issue of self-administered funds and multi-employer funds

- Frankly speaking, small funds have challenges with complying. Of course, the problem is not exclusive to small funds, but also with a few of the large self-administered funds.
- We think that consolidation, under multi-employer funds will assist in introducing more professionalism and stronger governance in funds
- However, there is a challenge also with umbrella funds which, by nature, do not enable member representation on their boards. We are mulling the idea of adopting best practice in the industry by adopting and compelling the use of management committees to facilitate some form of member representation in umbrella funds, including also requiring that at least 50% of their trustees be independent

7. Penalties

- As some of you would be aware, we have increased the maximum penalty for non-compliance from R1000 to R4000, as of this week.
- We will be also be naming and shaming funds, their service providers and particularly administrators who fail to comply as of this year

8. Status of whistleblowers

- We have clarified that trustees, administrators, etc. have a choice to indicate whether their disclosures should be treated as confidential or if whether they do not mind us revealing their details
- Of course, all this is still subject to the FSB Act in terms of the Registrar having the power to use the information under certain circumstances

9. Tax directives on transfers

- We have engaged with Treasury (and SARS) on this issue, and highlighted the unintended consequences on the administrative side.

- Because a transfer is not an exit from a fund, and ideally should not trigger tax.
- In the 2018 Budget Review the Treasury has committed to address this concern

10. A focus on disclosure and costs

- The default regulations were finalised and signed by the Minister of Finance last year, for effective date 2019
- The defaults are about conduct by funds and how to deliver best outcomes for members
- One of the key features of them is around cost effectiveness and trying to ensure that funds deliver good value and protection to members
- As part of enforcing the default regulations, we will piggy-bag on some of the existing industry standards to standardise disclosure to members, funds and the supervisor so that members, trustees and the supervisor can see exactly the fees funds are being charged!
- As the FSB, we will enhance internal capability to dig deeper into the breakdown of costs and what funds are being charged, to ascertain if whether there is value for money. And it is not necessarily about chasing the cheapest services or products, but about offering good value for money

11. Points to ponder and conclusions

- We need a sustainable formal lobby body which will represent only the interest of members and trustees. This body needs to be independent of sponsorship by service providers.
- Such a body is crucial in streamlining engagements.
- How can trustees, funds and administrators assist the regulator by ensuring that the information they provide is accurate and reliable, and assists the regulator in making the right decision. Should not administrators invest in their systems to ensure better record keeping?
- As part of pro-activeness, we will be meeting with the Top 100 funds and large administrators this year, to assess their challenges and how we can work together to improve
- As the department we will focus on how we can detect problems earlier in funds, and investigate thoroughly and swiftly. This means building some market intelligence systems, and following up on whistleblowing
- There will be some mistakes and accidents, from time to time, which we must all try to keep to the bare minimum and learn from.

- After all, as I said in the beginning, we as humans have not changed that much in the last thousands of years. But maybe also, it is these weakness and shortcomings which after all, make us humans, which is the irony of it all
- Our greatest weapon to fight these weaknesses and keep ourselves in check, lies deep within us, which is our conscience, conscience to do the right thing!

Thank you