

FINANCIAL SERVICES BOARD

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GENERAL CIRCULAR TO PENSION FUND ADMINISTRATORS

SECRET PROFITS BY PENSION FUND ADMINISTRATORS

1. This circular is issued by the Registrar of Pension Funds and directed at all persons and institutions ("administrators") who have been granted approval in terms of section 13B of the Pension Funds Act, No 24 of 1956 ("the Act"), to administer the investments of pension funds as defined in the Act.
2. Administrators are financial institutions in terms of the Financial Services Board Act, No 97 of 1990, and as such fall to be supervised by the Financial Services Board and are in particular subject to the provisions of the Financial Institutions (Protection of Funds) Act, No 28 of 2001 and the Financial Advisory and Intermediary Services Act, No 37 of 2002 (the FAIS Act).
3. When dealing with pension fund monies under their control, institutions like administrators are required by the law to observe the utmost good faith, to exercise proper care and diligence, to refrain from gaining directly or indirectly improper advantage for themselves to the prejudice of their principals (the pension funds concerned) and to avoid conflicts of interest. The motivation for these requirements is that administrators stand in a relationship of trust vis-a-vis the pension funds whose money they administer.

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 Ms LM Mojela Ms AMM Mokgabudi Prof PJ Sutherland Ms HS Wilton
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4. By way of example, the following practice would be unlawful: an administrator consolidates or "bulks" credit balances of pension fund bank accounts under its control and thereby procures a higher rate of interest from the bank. All interest yielded is not passed on proportionally to the pension funds entitled thereto and the additional interest derived from the consolidated amount, goes for the benefit of the administrator. This "secret profit" is also not disclosed to the boards of management of the pension funds.
5. A further example is if the administrator is part of a group of companies which included a bank. In this case there is no negotiation to increase possible interest rates payable to the funds being administered, but the group as a whole benefits.
6. There may be other permutations of this practice, the net result in each instance being an improper benefit or perquisite gained by the administrator at the expense of the funds under its management, and without full disclosure being made to the funds.
7. As this practice may be widespread and as many pension funds may have been at the receiving end with concomitant losses to their members, the Registrar deems it advisable to investigate the matter thoroughly, if necessary by formal inspections into the affairs of administrators over the past years. A preferable alternative would be for administrators to volunteer information to the Registrar concerning practices of this nature conducted by them presently or in the past and to put forward proposals as to how redress will be made to the pension funds concerned.
8. Hence the purpose of this letter is to invite administrators to make full and frank disclosure to this office of

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- (a) practices and methods, such as that mentioned in 4., but not necessarily confined thereto, whereby secret profits were made directly or indirectly by administrators or associated companies to the detriment of pension funds whose money they controlled;
 - (b) the pension funds involved;
 - (c) the amounts of which individual funds were deprived;
 - (d) how it is proposed redress will be made to the funds.
9. As this matter is of great concern to the Registrar, I shall be grateful of your response by not later than 30 April 2006. Please also note that this approach is made without prejudice to the Registrar's right to take any other action which the law may allow.

Yours faithfully

DP TSHIDI

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DEPUTY EXECUTIVE OFFICER: PENSIONS

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