

FSCA COMMUNICATION 45 OF 2020 (RF)

BOARDS OF RETIREMENT FUNDS: EXPIRATION OF TERM OF OFFICE AND COVID-19¹

1. PURPOSE

- 1.1 The purpose of this Communication is to remind all Boards of retirement funds and their administrators of the binding force of a fund's rules in terms of section 13 of the Pension Funds Act, 1956 ("PFA"), and in particular the impact thereof in respect of a Board's terms of office.

2. BACKGROUND

- 2.1 The Financial Sector Conduct Authority ("the Authority") has been inundated with requests for extension of Boards' terms of office. The majority of these requests are made as a result of the impact of the Covid-19 pandemic and the current national lockdown regulations, which make member elections of board members challenging.

- 2.2 Section 279(1) of the Financial Sector Regulation Act, 2017 ("FSR Act") provides that:

"A financial sector regulator may, for a valid reason, extend any period for compliance with, or a period prescribed by, a provision of a financial sector law, other than a provision that the financial sector regulator must comply with."

- 2.3 The PFA does not prescribe terms of office for Boards of retirement funds, instead this is prescribed in terms of funds' rules. Hence, the Authority is not empowered by law to extend the terms of office of Boards of retirement funds.

3. REGULARISING THE NON-COMPLIANCE WITH THE FUND'S RULES

- 3.1 Section 26(2) of the PFA provides:

"Where a fund has no properly constituted board contemplated in section 7A and has failed to constitute a board after 90 days written notice by the registrar, or where the fund cannot constitute a board properly or where a board fails to comply with any requirements prescribed by the registrar in terms of section 7A(3), the registrar may, notwithstanding the rules of the fund, at the cost of the fund –

(a) appoint so many persons as may be appropriate to the board of the fund or appoint so many persons as may be necessary to make up the full complement or quorum of the board; and

(b) assign to such board such specific duties as the registrar deems expedient."

¹ **Covid-19** means the Novel Coronavirus (2019-nCov) which is an infectious disease caused by a virus that has previously not been scientifically identified in humans, which emerged during 2019 and was declared a global pandemic by the World Health Organisation during the year 2020

- 3.2 Given the challenges posed by Covid-19, Boards of retirements funds should, where their terms of office have expired and they are unable to constitute a proper board or fill a vacancy within 90 days following the date on which the vacancy arose (as prescribed in FSB Notice 3 of 2016²), apply to the Authority in terms of section 26(2) of the PFA to appoint board members to make up the full complement or quorum of the board.
- 3.3 Retirement Funds are kindly reminded to submit any such applications in terms of section 26(2) of the PFA to the Authority via the Authority's online platform³.
- 3.4 The Authority would also like to thank all the funds who made an effort to respond to the Covid-19 impact survey in relation to rules dealing with suspension or reduction of contributions. The responses have been accordingly processed and shared with relevant authorities monitoring the impact of Covid-19.

4. CONTACT

- 4.1 For further information regarding this Communication, please contact Ms Corlia Buitendag, HOD: Retirement Funds Conduct Supervision Division, at Cornelia.buitendag@fsca.co.za.



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² Available on the FSCA website under Regulatory Frameworks < Notices < Retirement Funds or by clicking on the following link: <https://www.fsca.co.za/Notices/Notice%203%20of%202016.pdf>

³ Available on the FSCA website under Regulated Entities < E-Services < Retirement Fund or by clicking on the following link: <https://www.fsca.co.za/Regulated%20Entities/Pages/ES-Retirement-Fund.aspx>