

# **FUND RULES**

## EasyEquities Retirement Annuity Fund

DIRECTORS: • **MARK BARNES**/CHAIRMAN • **CHARLES SAVAGE**/CEO • **GARY VAN DYK**/CFO

**FIRST WORLD TRADER (PTY) LTD T/A EASYEQUITIES** IS AN AUTHORIZED FINANCIAL SERVICES PROVIDER (FPS NUMBER 22588)

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**1. NAME**

The EASYEQUITIES RETIREMENT ANNUITY FUND shall be established on 1 June 2017 and shall be governed by these RULES, as amended, with effect from that date notwithstanding the actual date of registration of these RULES in terms of the ACT.

**2. REGISTERED OFFICE**

The registered office of the FUND shall be at Ground Floor, Block B, The Offices of Hyde Park, Strouthos Place (off 2nd Road), Hyde Park, 2196.

**3. OBJECT**

3.1. The object of the FUND is to provide benefits for MEMBERS of the FUND upon their RETIREMENT DATE, or to provide benefits to their DEPENDANTS or NOMINEES upon the death of such MEMBERS, as provided for in the ACT and the INCOME TAX ACT.

3.2. All benefit payments are subject to the provisions of the Income Tax Act, 1962, (Act No 58 of 1962) as amended from time to time, and subject to any other appropriate legislation prevailing from time to time.

**4. LEGAL PERSONA**

The FUND, in its own name, shall be capable in law of suing and of being sued and of acquiring, holding and alienating property, movable and immovable.

**5. DEFINITIONS**

In these RULES words defined in the ACT and not defined below bear the meanings thus assigned to them in the ACT and, unless inconsistent with the context, all words and expressions importing the masculine gender shall include the feminine; words signifying the singular number shall include the plural and vice versa; a reference to a person includes a juristic person; and the following expressions shall have the following meanings:

ACT shall mean the Pension Funds Act, 1956 and any subordinate legislation there under, as amended from time to time.

ACTUARY shall mean the actuary of the FUND appointed in terms of these RULES from time to time, and who is a valuator as referred to in the ACT.

ADJUDICATOR shall mean the Pension Funds Adjudicator appointed in terms of the ACT.

ADMINISTRATOR shall mean a person approved by the registrar in terms of the ACT and appointed in terms of these RULES to maintain the records of the FUND and to carry out the administrative functions relating to the FUND.

ANNUITY shall mean a compulsory non-commutable annuity issued in the name of the MEMBER or BENEFICIARY which is not capable of being transferred, assigned, reduced, hypothecated or attached by creditors as contemplated in Sections 37A and 37B of the ACT, provided that this may, subject to the requirements of the REVENUE AUTHORITIES, include a “living annuity” or “retirement income drawdown account” or other similar arrangement as defined in the INCOME TAX ACT.

ANNUITY PROVIDER shall mean a qualifying person in accordance with the requirements of the INCOME TAX ACT and/or the REVENUE AUTHORITIES, who enters into an agreement with a MEMBER or his BENEFICIARY to provide an ANNUITY

APPROVED FUND shall include an APPROVED PENSION FUND, an APPROVED PENSION PRESERVATION FUND, an APPROVED PROVIDENT FUND, an APPROVED PROVIDENT PRESERVATION FUND or an APPROVED RETIREMENT ANNUITY FUND.

APPROVED PENSION FUND shall mean a pension fund as defined in the INCOME TAX ACT.

APPROVED PRESERVATION PENSION FUND shall mean a preservation pension fund as defined in the INCOME TAX ACT.

APPROVED PRESERVATION PROVIDENT FUND shall mean a preservation provident fund as defined in the INCOME TAX ACT.

APPROVED PROVIDENT FUND shall mean a provident fund as defined in the INCOME TAX ACT.

APPROVED RETIREMENT ANNUITY FUND shall mean a retirement annuity fund as defined in the INCOME TAX ACT.

AUDITOR shall mean the auditor as provided for in the ACT and appointed in terms of these Rules.

AUTHORISED FINANCIAL SERVICES PROVIDER shall mean a financial services provider that is authorised as such by the Registrar of Financial Services in terms of the Financial Advisory and Intermediary Services Act, 2002, as amended from time to time.

BENEFICIARY shall mean a person who is entitled to a benefit in terms of these Rules, whether or not he is a DEPENDANT or NOMINEE or both.

BENEFICIARY FUND shall mean a beneficiary fund as defined in the ACT to which death benefits may be paid on behalf of BENEFICIARIES in terms in terms of section 37C of the ACT.

BOARD shall mean the BOARD of the FUND constituted in terms of these Rules consisting of the TRUSTEES collectively.

COMMENCEMENT DATE shall mean 1 JUNE 2017

COMPLAINANT shall mean

- (a) Any person who is or claims to be
  - (i) a MEMBER or former MEMBER of the FUND; or
  - (ii) a BENEFICIARY or former BENEFICIARY of the FUND; or
- (b) any person who has an interest in a COMPLAINT; or
- (c) the BOARD of TRUSTEES or any one or more of the TRUSTEES; or
- (d) any group of persons referred to in (a) above.

COMPLAINT means a COMPLAINT of a COMPLAINANT relating to the administration of the FUND, the investment of its funds or the interpretation and application of the RULES or such other matter as may be contemplated in the ACT.

CONTRIBUTIONS shall mean a monthly payment, a payment made on any other periodic basis or a once-off payment made to the FUND by a MEMBER or in respect of a MEMBER as set out in the MEMBER APPLICATION FORM or any amendment to the MEMBER APPLICATION FORM, and in terms of RULE 19 and RULE 20 includes a monetary transfer or a transfer other than in cash as the INCOME TAX ACT may allow.

DEPENDANT shall in relation to a MEMBER, means

- a) a person in respect of whom the member is liable for maintenance;
- b) a person in respect of whom the member is not legally liable for maintenance, if such person
  - (i) was, in the opinion of the BOARD, upon the death of the MEMBER in fact dependant on the member for maintenance;
  - (ii) is the SPOUSE of the MEMBER
  - (iii) is a child of the MEMBER, including a posthumous child, an adopted child and a child born out of wedlock
- c) a person in respect of whom the MEMBER would have become legally liable for maintenance, had the member not died

DIVORCE ACT shall mean the Divorce Act, 1979, as amended from time to time.

DIVORCE ORDER shall mean a valid and enforceable court order in terms of the DIVORCE ACT.

DIVORCE PENSION INTEREST shall mean a pension interest as defined in the DIVORCE ACT, read together with section 37D of the ACT.

EXPENSES means costs related to the management and administration of the FUND, levies, taxes, broker and financial advisor fees, costs of actuarial valuations and investigations, audit fees (if applicable), bank charges, the cost of fidelity guarantee insurance and professional indemnity insurance, legal fees and fees payable to other advisors, remuneration which may be payable to the BOARD, SPONSOR and the PRINCIPAL OFFICER (if any), fees and levies payable to the REGISTRAR, any loss suffered or expense incurred by the FUND which cannot be recovered from insurance effected by the BOARD or the responsible party, and any other costs regarded as falling within the definition of EXPENSES from time to time by the BOARD;

EQUITABLE SHARE means at any time the realisable value of all INVESTMENT ACCOUNTS administered by the FUND in respect of a MEMBER, as determined in terms of RULE 14 less relevant EXPENSES

FINANCIAL YEAR shall mean the twelve month period ending on the last day of MARCH each year.

FUND shall mean EASYEQUITIES RETIREMENT ANNUITY FUND.

INCOME TAX ACT shall mean the Income Tax Act, 1962 including any subordinate legislation there under, as amended from time to time

INDEPENDENT TRUSTEE shall mean a TRUSTEE who is independent of and not employed by the SPONSOR, any subsidiaries or associate companies within the SPONSOR'S group of companies or any shareholders of the SPONSOR, and who complies with the requirements of an independent trustee as determined by the REGISTRAR

INSURER shall mean a long term insurer registered as such under the provisions of the Long-Term Insurance Act, 1998 as amended from time to time

INVESTMENT ACCOUNT shall mean in respect of each MEMBER one or more accounts through which all CONTRIBUTIONS paid into the FUND, plus any amount transferred from an APPROVED FUND, in respect of such MEMBER are administered and which has as its underlying investment one or more PORTFOLIO/S as selected by the MEMBER (or the Trustees where relevant) as provided for in RULE 28. The INVESTMENT ACCOUNT is increased by net CONTRIBUTIONS (plus net interest where applicable) and adjusted by INVESTMENT RETURN

INVESTMENT RETURN shall mean any income (received or accrued) and capital gains and losses (realised and unrealised) less an allowance for any tax and such expenses (paid or incurred) associated with the acquisition, holding or disposal of the assets of the FUND as may be determined by the ADMINISTRATOR:

- (a) Such INVESTMENT RETURN may be positive or negative
- (b) the INVESTMENT RETURN relating to such MEMBER'S or LIVING ANNUITANT'S investment within each PORTFOLIO shall be allocated to such MEMBER'S or LIVING ANNUITANT'S benefit within the PORTFOLIO

LIVING ANNUITANT shall mean a MEMBER or BENEFICIARY of a deceased MEMBER who is in receipt of a LIVING ANNUITY or the nominee of a deceased LIVING ANNUITANT who is in receipt of a LIVING ANNUITY

LIVING ANNUITY shall mean an annuity paid from a LIVING ANNUITANT'S LIVING ANNUITY CAPITAL ACCOUNT in terms of the provisions of Rule 24 which must comply with the following conditions -

- (a) The value of the annuity must be determined solely by reference to the value of the assets which are held by or on behalf of the FUND providing the annuity;

- (b) The amount of the annuity must be determined in terms of a method or formula prescribed by the Minister of Finance of the Republic of South Africa;
- (c) The full remaining value of the assets referred to in (a) of the definition of LIVING ANNUITY may be paid as a lump sum when the value of those assets at any time become less than an amount prescribed by the Minister of Finance of the Republic of South Africa from time to time;
- (d) The amount of the annuity is not guaranteed;
- (e) On the death of the LIVING ANNUITANT the value of the assets referred to in (a) of the definition of LIVING ANNUITY may be paid to a nominee nominated by the LIVING ANNUITANT as an ANNUITY, as a lump sum, or partly as an ANNUITY and partly as a lump sum, in the absence of a nominee nominated by the LIVING ANNUITANT to the deceased former LIVING ANNUITANT'S estate as a lump sum; and
- (f) The annuity must comply with any further requirements prescribed by the Minister of Finance of the Republic of South Africa;

LIVING ANNUITY CAPITAL ACCOUNT shall mean at any particular date –

- (a) for each LIVING ANNUITANT, other than a LIVING ANNUITANT who was, immediately prior to becoming a LIVING ANNUITANT, a nominee of a deceased LIVING ANNUITANT, the portion of the MEMBER'S EQUITABLE SHARE at retirement or benefit allocated in terms of Rule 25 which is utilised to provide for a LIVING ANNUITY in terms of Rule 24 or, in the case of a LIVING ANNUITANT who was a nominee of a deceased LIVING ANNUITANT, the value of the LIVING ANNUITY CAPITAL ACCOUNT at the time of the death of the LIVING ANNUITANT; plus
- (b) Relevant INVESTMENT RETURNS; less
- (c) Relevant EXPENSES; less
- (d) LIVING ANNUITY payments made;

MEMBER shall mean a person who has been admitted in terms of these RULES to membership of the FUND and who has not ceased to be a MEMBER under the provisions of these RULES and will include a LIVING ANNUITANT where appropriate

MEMBER APPLICATION FORM shall mean the application in respect of a MEMBER in the format determined from time to time by the BOARD, and completed in full, to register that MEMBER'S participation in the FUND, which must contain such information as the BOARD may require from time to time, including (without limiting the generality of this) details of CONTRIBUTIONS, the PORTFOLIO/S selected by the MEMBER and of any BENEFICIARY nomination

NOMINEE shall mean a person, other than a DEPENDANT, who has been nominated in writing by the MEMBER as being entitled to receive all or part of the death benefit provided by the FUND and whose nomination has not been retracted or replaced by the MEMBER.

PORTFOLIOS shall mean the investment portfolios determined by the BOARD, at their discretion from time to time, in which a MEMBER may have any part of his CONTRIBUTIONS invested and into which or from which a MEMBER may switch, in each case on such terms and according to such process of any provider of a PORTFOLIO or the ADMINISTRATOR, as may be applicable at that time.

PRINCIPAL OFFICER shall mean the person appointed in terms of these Rules from time to time in accordance with section 8 of the ACT

REGISTRAR shall mean the Registrar or the Deputy Registrar of Pension Funds appointed in terms of the Financial Services Board Act, 1990, as amended.

RETIREMENT DATE shall mean the date selected by the MEMBER, in terms of RULE 22.2, which date may not be earlier than the date on which the MEMBER attains age 55 years, or shall mean the date on which the MEMBER elects to retire due to ill-health in terms of RULE 23;

REVENUE AUTHORITIES shall mean the South African Revenue Service and any other statutory revenue authority whose approval of the FUND has been obtained, where required.

RULES shall mean the Rules of EASYEQUITIES RETIREMENT ANNUITY FUND including the amendments thereto.

SECURITY or SECURITIES means the definition of securities contained in section 1 of the Financial Markets Act, 2012;

SPONSOR shall mean First World Trader (Pty) Ltd, (Registration No. 1999/021265/07) the organisation that established the FUND.

SPONSOR TRUSTEE shall mean a TRUSTEE who is not an INDEPENDENT TRUSTEE

SPOUSE shall mean a person who is a permanent life partner or spouse or civil union partner of a MEMBER in accordance with the Marriage Act, 1961, the Recognition of Customary Marriages Act, 1998, or the Civil Union Act, 2006 or the tenant of any religion.

TRUSTEE shall mean a person appointed in terms of these RULES to serve as a member of the BOARD, and includes an alternate

UNCLAIMED BENEFIT shall mean the benefit as defined in the ACT that a MEMBER or BENEFICIARY is entitled to and which has not been claimed in terms of these RULES



## 6. MANAGEMENT OF THE FUND

### 6.1. CONSTITUTION OF THE BOARD

- 6.1.1. The SPONSOR shall initially appoint 4 (four) TRUSTEES, at least 1 (one) of whom must be an INDEPENDENT TRUSTEE
- 6.1.2. The management, control and administration of the FUND vest in a BOARD comprising 4 (four) TRUSTEES, at least 1 (one) of whom must be an INDEPENDENT TRUSTEE.
- 6.1.3. The BOARD shall elect one of the TRUSTEES as the chairperson of the BOARD. The chairperson will hold office for 1 (one) year where after he may be re-elected.

### 6.2. APPOINTMENT OF TRUSTEES

- 6.2.1. The BOARD, after consultation with the SPONSOR shall appoint the TRUSTEES in accordance with the constitution of the BOARD set out in Rule 6.1 above.
- 6.2.2. The BOARD must ensure that an exemption from the requirement that MEMBERS have the right to elect at least 50% (fifty percent) of the TRUSTEES as permitted in terms of the provisions of section 7B(1)(b)(ii) of the ACT is, at all times, in place.
- 6.2.3. The BOARD after consultation with the SPONSOR may appoint an alternate to any TRUSTEE should this be required on such terms and conditions as they may decide, to act in the place of any TRUSTEE when such TRUSTEE is not available to act. Alternates shall in all respects be subject to the qualifications, terms and conditions applicable to TRUSTEES, unless otherwise provided in such alternate's terms and conditions of appointment. An alternate, while acting for a TRUSTEE, shall exercise and discharge all powers, duties and functions of the TRUSTEE he represents. An alternate shall be given notice of a meeting of the BOARD. An alternate may only vote if his principal TRUSTEE is not present. An alternate shall be counted in computing a quorum only when acting for a TRUSTEE.

### 6.3. TERM OF OFFICE OF A TRUSTEE

- 6.3.1. A TRUSTEE will hold office for a period of 3 (three) years, provided that a TRUSTEE whose term of office has expired may be re-appointed.
- 6.3.2. A TRUSTEE will remain a TRUSTEE until –
  - 6.3.2.1. the expiry of his term of office;
  - 6.3.2.2. he resigns by giving the chairperson 30 (thirty) days written notice to that effect;
  - 6.3.2.3. in the case of the chairperson resigning, he gives the rest of the BOARD 30 (thirty) days written notice to that effect;
  - 6.3.2.4. he ceases to hold office in terms of Rules 6.4 or 6.5.

#### **6.4. PERSONS DISQUALIFIED FROM BEING OR ACTING AS TRUSTEES**

- 6.4.1. A person will not be permitted to be a TRUSTEE or a TRUSTEE will cease to be a TRUSTEE if:
- 6.4.1.1. he is or becomes mentally or physically incapable of acting on the basis of medical evidence to that effect received by the BOARD; or
  - 6.4.1.2. his estate has been or is sequestrated or surrendered or assigned in favour of his creditors; or
  - 6.4.1.3. he has been or is convicted by a competent court of theft, fraud, forgery or a similar offence; or
  - 6.4.1.4. he has been or is discharged by a competent court from an office of trust on account of misconduct; or
  - 6.4.1.5. he has been or is convicted by a competent court on any charge and sentenced to a prison term without the option of a fine; or
  - 6.4.1.6. if a member of any professional body, he is prohibited from continuing to practise in his profession; or
  - 6.4.1.7. he is or has been removed as a principal officer, auditor or actuary of any other registered pension fund organisation as defined in the ACT by the REGISTRAR, in terms of the ACT.
  - 6.4.1.8. In the case of a SPONSOR TRUSTEE, he is an employee of the SPONSOR or an associated company of the SPONSOR at the time that he is appointed and he subsequently leaves the employment of the SPONSOR or the associated company
  - 6.4.1.9. In the case of an INDEPENDENT TRUSTEE, when he no longer satisfies the criteria for independence.
- 6.4.2. A determination as to whether or not a person is incapable of being appointed as a TRUSTEE or remaining a TRUSTEE will be made by the agreement of the remaining TRUSTEES.

#### **6.5. REMOVAL OF A TRUSTEE AND FILLING OF VACANCIES**

- 6.5.1. A TRUSTEE will cease to hold office if
- 6.5.1.1. the remaining TRUSTEES resolve that he be removed from office because of a breach of his duties to the FUND, MEMBERS and/or other BENEFICIARIES after having given him a fair hearing, conducted by the BOARD or a committee of the BOARD; or

6.5.1.2. he has failed to attend 2 (two) consecutive BOARD meetings without submitting an apology to the chairperson or PRINCIPAL OFFICER prior to the meeting or, in the case of a failure to submit such an apology, without showing good cause for such failure.

6.5.1.3. in respect of any TRUSTEE appointed with effect from any date after the effective date of these RULES, if that TRUSTEE, within 30 (thirty) days of his appointment, fails to sign the “Acceptance of duties” documents, incorporating the FUND’S code of conduct, together with any annexure thereto;

6.5.1.4. the SPONSOR requests the termination of his appointment by notice to the FUND.

6.5.2. A vacancy which arises as a result of a TRUSTEE ceasing to hold office during his term of office shall be filled in terms of Rule 6.2., provided that the BOARD shall not be obliged to appoint another TRUSTEE if there are at least 4 (four) TRUSTEES in office.

6.5.3. A vacancy on the BOARD will not invalidate any proceedings of the BOARD, provided that a quorum is in place.

## **6.6. REMUNERATION**

6.6.1. The TRUSTEES will receive, from the FUND, a refund of the expenses incurred, if any, by them in the course of performing their duties on behalf of the FUND. The procedure for approval of such expenses will be determined by the BOARD from time to time.

6.6.2. In addition, the INDEPENDENT TRUSTEES may receive such payments for attending meetings and performing their functions as may be decided from time to time by the BOARD after consultation with the PRINCIPAL OFFICER, provided that such payments must be market-related.

## **7. MEETINGS OF TRUSTEES**

7.1. The BOARD will meet from time to time as is necessary to conduct the business of the FUND but no less than once every calendar year.

7.2. It is not a requirement for a valid meeting that all TRUSTEES must be present at the same place. A telephonic or video link up with 1 (one) or more of the TRUSTEES will constitute such TRUSTEE(S) presence at the meeting.

7.3. The chairperson may convene a special meeting of the BOARD if the chairperson regards this as necessary. The chairperson must also convene a special meeting within 21 (twenty-one) working days of being so requested by at least 3 (three) of the TRUSTEES.

- 7.4. The chairperson must cause at least 14 (fourteen) working days' notice to be given of every BOARD meeting, specifying the place, date and time of the meeting, as well as the general nature of the business to be conducted at the meeting.
- 7.5. At least 4(four) TRUSTEES will be required to constitute a quorum provided that this must include an INDEPENDENT TRUSTEE.
- 7.6. If a quorum is not present at the time determined for the start of the meeting, the meeting may be adjourned by the chairperson for a period of not less than 7 (seven) working days. At the postponed meeting all the TRUSTEES must be present, in order to constitute a quorum.
- 7.7. The meetings of the BOARD will be chaired by the chairperson. If the chairperson is temporarily absent or, for any other reason, is unable to perform his functions as chairperson, the BOARD shall elect a person from among its number present to act as chairperson. The chairperson will be responsible for the orderly conduct of the meetings and may suspend or exclude from a meeting any TRUSTEE who deliberately ignores the authority of the chairperson or who interferes with the orderly functioning of the BOARD.
- 7.8. The chairperson shall cause minutes to be kept of all meetings held by the BOARD and such minutes must be distributed within 14 (fourteen) working days of a BOARD meeting to the TRUSTEES. Any amendments to the minutes must be lodged with the chairperson within 14 (fourteen) working days of distribution. If no amendments are received within 14 (fourteen) working days of the distribution of the minutes, the minutes of that meeting will be proposed, seconded and signed by the chairperson at the next BOARD meeting. Once those minutes are signed by the chairperson, they will constitute prima facie evidence of the business conducted at the meeting.
- 7.9. The BOARD shall seek consensus in all matters requiring a decision. Should the BOARD fail to reach consensus on any issue, a decision will be taken by a simple majority of votes of TRUSTEES present at any meeting, each TRUSTEE having one vote.
- 7.9.1. In the event of a deadlock, the matter will be referred to a special meeting of the BOARD that must be convened within fourteen (14) working days. At that meeting, if the matter remains unresolved, the meeting must attempt to decide, by consensus, on the appointment of an independent expert who is suitably qualified, for a recommendation. If no majority decision can be reached on such person's recommendation, the matter must be referred to an arbitrator agreed to by the BOARD and the arbitrator's decision will be final and binding on the BOARD. In the event that the BOARD is not able to decide on which person or arbitrator the matter should be referred to, as the case may be, then the matter shall be referred by the PRINCIPAL OFFICER to the President of the Law Society in order for the latter to determine such appointment. Any costs incurred in resolving disputes will be regarded as an EXPENSE and will met by the FUND.
- 7.9.2. A written resolution signed or agreed to via electronic means by all those TRUSTEES necessary to constitute a quorum of the BOARD is effective as if it had been passed at a meeting of the BOARD duly convened and held. Any resolution passed in terms of this Rule must be noted at the first meeting of the BOARD held after the passing of such resolution.

## 8. BOARD TO DIRECT AND CONTROL FUND

- 8.1. The object of the BOARD shall be to direct, control and oversee the operations of the FUND in accordance with applicable laws and the RULES.
- 8.2. In pursuing its object the BOARD shall-
  - 8.2.1. take all reasonable steps to ensure that the interests of MEMBERS in terms of the RULES and the provisions of the ACT are protected at all times;
  - 8.2.2. act with due care, diligence and good faith;
  - 8.2.3. avoid conflicts of interest; and
  - 8.2.4. act with impartiality in respect of all MEMBERS.
- 8.3. The BOARD must establish a code of conduct which sets out, as the policy of the FUND, the management by the BOARD of themselves, the management by the BOARD of the FUND and the management by the BOARD of their relationship with the SPONSOR, and service providers and stakeholder of the FUND
- 8.4. If any TRUSTEE is in breach of the code of conduct the BOARD has the power to suspend that TRUSTEE for such period or on such terms as the BOARD decides, or may in terms of RULE 6.5., remove such TRUSTEE from office.

### 8.5. Duties of the Board

- 8.5.1. The duties of a BOARD shall, inter alia, include to –
  - 8.5.1.1. ensure that proper registers, books and records of the operations of the FUND are kept, including proper minutes of all resolutions passed by the BOARD;
  - 8.5.1.2. cause true and full accounts of the FUND to be kept in accordance with general accounting practice and any guidelines issued by the AUDITOR from time to time, such accounts to be made up to the FINANCIAL YEAR end and fairly to present the state of affairs of the FUND and its business and financial position and to be audited by the AUDITOR;
  - 8.5.1.3. ensure that adequate and appropriate information is communicated to the MEMBERS of the FUND informing them of their rights, benefits and duties in terms of the RULES;
  - 8.5.1.4. obtain expert advice on matters in respect of which the BOARD may lack sufficient expertise;
  - 8.5.1.5. ensure that the RULES, operation and administration of the FUND comply with the ACT, the Financial Institutions (Protection of Funds) Act, 2001 and all other applicable laws and any other duties imposed by the RULES;

- 8.5.1.6. operate one or more banking accounts opened in the name of the FUND with a bank registered in terms of the Banks Act, 1990;
  - 8.5.1.7. in consultation with the AUDITOR, take such measures as will ensure the efficient and secure operation of the banking account;
  - 8.5.1.8. cause every document of title in any PORTFOLIO to be registered in the name of the FUND, or in the name of a nominee company approved by the REGISTRAR;
  - 8.5.1.9. ensure that every title deed and other document of title belonging to the FUND is kept securely and in appropriate safekeeping;
  - 8.5.1.10. ensure that every cheque, contract or other document pertaining to the FUND is signed by such persons as the BOARD, by resolution, appoints and if applicable, in the manner set out in the ACT;
  - 8.5.1.11. take such measures necessary to protect the assets of the FUND and pay only such benefits as are provided for in the RULES.
- 8.5.2. The references to the specific duties of the BOARD above will not, in any way, derogate from the other common law and statutory duties of the BOARD.

## **8.6. Powers of the Board**

- 8.6.1. The BOARD will, subject to the RULES, have all such powers as may be exercised by the FUND in terms of the RULES, provided that any specific powers set out below will not be construed as derogating from the general powers of the BOARD.
- 8.6.2. The BOARD will have the power, subject to the provisions of the ACT, to invest the monies of the FUND in SECURITIES or other investments as it may from time to time determine.
- 8.6.3. The power of the BOARD to make investments and to realise, vary, reinvest or otherwise deal with the SECURITIES concerned, may be delegated by the BOARD, on such terms and conditions as they may specify, to
  - 8.6.3.1. a sub-committee of such of their number as they nominate;
  - 8.6.3.2. a financial institution as defined in the Financial Institutions (Protection of Funds) Act, 2001; and/or
  - 8.6.3.3. a stockbroker as defined in section 1 of the Financial Markets Act, 2012;
  - 8.6.3.4. a person who is an AUTHORISED FINANCIAL SERVICES PROVIDER

- 8.6.4. The BOARD will not be liable for the negligence, dishonesty or fraud of an institution referred to in Rule 8.6.3.2 or a person referred to in Rule 8.6.3.3. and 8.6.3.4.
- 8.6.5. Notwithstanding the provisions of Rule 8.6.2. above, the power of investment of the BOARD in respect of the assets of the FUND will be limited to the selection of investment portfolios managed by the institutions referred to in Rule 8.6.3.2 or the person referred to in Rule 8.6.3.3. or 8.6.3.4. The investment of the assets of the FUND in a particular portfolio will be made in accordance with the election of the MEMBERS of the FUND, provided that such election will be limited to such portfolios selected by the BOARD.
- 8.6.6. The BOARD shall have the power to:
- 8.6.6.1. effect policies of insurance with one or more registered INSURERS for the purposes of investing the FUND'S moneys;
  - 8.6.6.2. contract on behalf of the FUND and to sign such contract or other document on behalf of the FUND, to institute legal action or process for the FUND and to conduct, settle or abandon such action or process, to defend or settle legal action or process instituted against the FUND;
  - 8.6.6.3. make, amend and rescind policies and procedures in respect of a matter concerning the FUND, provided that such policies and procedures do not conflict with the RULES, the ACT or the INCOME TAX ACT;
  - 8.6.6.4. amend the RULES of the FUND, subject to the provisions of Rule 42.
- 8.6.7. The BOARD will be entitled, in its absolute discretion, to make any arrangements for the administration of the FUND and in this regard shall appoint the ADMINISTRATOR. The BOARD must ensure that the ADMINISTRATOR is registered in terms of section 13B of the ACT and must enter into an administration agreement which complies with any requirements as prescribed by the REGISTRAR.
- 8.6.8. The BOARD will be entitled, in its absolute discretion, to appoint consultants, investment advisers, investment managers, legal advisers and other professionals to assist the BOARD in performing its duties and functions where it considers this necessary or prudent.
- 8.6.9. The BOARD may, in accordance with the provisions of section 14 of the ACT, amalgamate any business carried on by the FUND with any business carried on by any other person, or transfer any business carried on by the FUND to any other person, or accept transfer of any business from any other person to the FUND.
- 8.6.10. The BOARD will have the power to take, generally, such steps as are, in its discretion, conducive to the attainment of the objects of the FUND.

**8.7. Delegation of powers by the Board**

- 8.7.1. The BOARD may delegate any of its powers to another person or a committee of the BOARD unless the empowering instrument, on a proper construction thereof, does not permit such power to be delegated.
- 8.7.2. For the purpose of interpretation of the RULES, it will be deemed that when a Rule empowers the BOARD to perform a function or duty, that the BOARD may delegate the power concerned in terms of Rule 8.7.1 above, unless the context clearly indicates otherwise.
- 8.7.3. The delegation referred to above must be made in terms of a mandate that provides that the powers and responsibilities delegated may be revoked at any time; that the person or committee of the BOARD must act within the mandate; and that the BOARD must ratify any decision made by such person or committee. In addition it is specifically provided that the BOARD remains accountable for any decision of the person or committee to whom a power or responsibility is delegated.

**8.8. CONFIDENTIALITY OF INFORMATION**

- 8.8.1. The BOARD and all TRUSTEES will only be entitled to such information from a MEMBER as the BOARD may require for the exercise of their duties in terms of the RULES. Such information will only be used for the purpose of the BOARD performing the duties in terms of the RULES and will not be disclosed to any person or body unless this is necessary for the operation of the FUND and then only on a confidential basis, or unless the person requiring such information is lawfully entitled to it. These provisions apply equally to the PRINCIPAL OFFICER.
- 8.8.2. The BOARD must take steps to ensure that any service provider to the FUND and the SPONSOR, to the extent that each has any exposure to the data relating to a MEMBER or BENEFICIARY, or any information about or relating to the FUND, does not abuse its knowledge of that data or information and that they do not disclose it to anyone else without permission of the BOARD

**9. APPOINTMENTS****9.1. Principal Officer**

- 9.1.1. The BOARD shall appoint a PRINCIPAL OFFICER. Any such appointment may be changed by the BOARD in its sole discretion.
- 9.1.2. The provisions of the ACT will apply in respect of the appointment, approval and removal of the PRINCIPAL OFFICER as well as in respect of any reports which the PRINCIPAL OFFICER may be required to give the REGISTRAR.



- 9.1.3. The PRINCIPAL OFFICER shall perform all the functions required to fulfil his duties in terms of the ACT, the RULES and the directions of the BOARD.
- 9.1.4. The PRINCIPAL OFFICER is entitled to receive such remuneration from the FUND for time spent on rendering services to the FUND as may be agreed to by the BOARD from time to time in consultation with the SPONSOR

## **9.2. Actuary and actuarial valuations**

- 9.2.1. The BOARD shall appoint an ACTUARY. Any such appointment may be changed by the BOARD in its sole discretion.
- 9.2.2. The provisions of the ACT will apply in respect of the appointment, approval and removal of the ACTUARY.
- 9.2.3. The ACTUARY will be the valuator of the FUND in terms of the ACT, unless the FUND has been exempted from compliance with the provisions of sections 9A and 16 of the ACT. The ACTUARY shall in addition to the function of valuator, perform such other functions as may be specified in the RULES or by the BOARD.
- 9.2.4. Unless the FUND has been exempted from compliance with the provisions of Sections 9A and 16 of the ACT, the FUND will be valued by the ACTUARY at intervals not exceeding 3 (three) years. Within 12 (twelve) months of the valuation date the ACTUARY shall submit a valuation report to the BOARD, who shall submit a copy thereof to the REGISTRAR. A copy of the valuation report or a summary thereof in the prescribed format will be open for inspection by the MEMBERS at the registered office of the FUND.
- 9.2.5. The BOARD will maintain such records as may be required by the ACTUARY to perform the valuation function referred to above.
- 9.2.6. Should the FUND require exemption from the provisions of sections 9A and 16 of the ACT, the BOARD must ensure that the ACTUARY submits the required certificate to the REGISTRAR.
- 9.2.7. Notwithstanding the above, the ACTUARY shall not be required to apply to the REGISTRAR to exempt the FUND from valuation where the REGISTRAR has exempted the FUND from valuation on a continuous basis and subject to the FUND complying with the REGISTRAR'S requirements for such continuous exemption

## **9.3. Auditor and financial statements**

- 9.3.1. The BOARD shall appoint an AUDITOR, for such periods as it determines, and may withdraw any such appointment and make another appointment in its place.
- 9.3.2. The provisions of the ACT will apply in respect of the appointment, approval and removal of the AUDITOR as well as in respect of any reports which the AUDITOR may be required to give the REGISTRAR.

- 9.3.3. When the AUDITOR is a partnership, the appointment of the AUDITOR will not lapse by reason of a change in the composition of the partnership, as long as not less than half of the partners in the reconstituted partnership are persons who were partners as at the date when the appointment of the partnership was last approved by the REGISTRAR.
- 9.3.4. The AUDITOR has for the purpose of performing his functions and duties –
- 9.3.4.1. the right of access at all reasonable times to the accounting records and all books, vouchers, documents and other property of the FUND;
  - 9.3.4.2. the right to require from the BOARD such information and explanations as he considers necessary;
  - 9.3.4.3. the right to investigate whether there are adequate measures and procedures for the proper application of sound economical, efficient and effective management of the FUND and for the utilisation of all the resources under the control of the BOARD; and
  - 9.3.4.4. the right to investigate any matter, including the efficiency and effectiveness of the internal control of the FUND, relating to expenditure by and the revenue of the FUND.
- 9.3.5. The BOARD shall prepare and submit such statements and reports as required by the ACT to the REGISTRAR, provided that where prescribed in the ACT, such statements and reports must be duly audited and reported on by the AUDITOR.

## **10. INTERPRETATION OF RULES, ANNEXURES AND COMPLAINTS**

- 10.1. The decision of the BOARD on the interpretation of these RULES shall be final and binding on all MEMBERS, and every person claiming to be entitled to a benefit under these RULES.
- 10.2. If a dispute arises between the FUND and a MEMBER or a BENEFICIARY in respect of the interpretation of the RULES, the administration of the FUND, the payment of any benefit, a decision of the BOARD or any other related matter, the MEMBER or BENEFICIARY may lodge a written complaint with the PRINCIPAL OFFICER.
- 10.3. The complaint must set out the basis for the dispute in writing and the PRINCIPAL OFFICER shall, subject to the provisions of Rule 10.6, deliver the complaint to the chairperson.
- 10.4. The chairperson or his delegate shall in his sole discretion refer the dispute to –
- 10.4.1. the BOARD or an appropriate committee of the BOARD for consideration and decision; or
  - 10.4.2. an appropriate officer of the FUND.

- 10.5. If a dispute is referred to the BOARD, the BOARD shall deal with the dispute as it would with any other decision in terms of Rules 7.9.
- 10.6. If a dispute is referred to an employee or officer of the FUND, such employee or officer shall attempt to resolve the dispute and if unsuccessful, shall advise the chairperson or his delegate. The PRINCIPAL OFFICER shall, unless the matter is resolved and subject to the provisions of the ACT, inform the MEMBER or BENEFICIARY in writing of the decision taken on behalf of the FUND in terms of this Rule.
- 10.7. If the MEMBER or BENEFICIARY is not satisfied with the decision referred to above or if the PRINCIPAL OFFICER fails to reply to the matter the MEMBER or BENEFICIARY may lodge the complaint with the ADJUDICATOR in terms of the ACT.
- 10.8. A MEMBER will not have any claim against the FUND in respect of the bona fide investment of the assets of the FUND
- 10.9. No person will have any claim concerning the FUND either upon the FUND or against the BOARD, except in accordance with the RULES

## **11. INDEMNITY AND FIDELITY INSURANCE**

- 11.1. The BOARD, officers of the FUND and persons to whom they have delegated their functions shall not be personally liable for decisions taken or actions authorized except if such decisions or actions constitute gross negligence, dishonesty, fraud or a breach of trust.
- 11.2. The BOARD shall safeguard the FUND against loss by insuring the FUND against loss due to the negligence, dishonesty or fraud of any of the officials of the FUND (including a TRUSTEE).
- 11.3. Each TRUSTEE, the PRINCIPAL OFFICER and any officer of the FUND is indemnified by the FUND against all proceedings, costs and expenses incurred by reason of any claim in connection with the FUND, not arising from their gross negligence, dishonesty, fraud or breach of trust.
- 11.4. The BOARD will satisfy itself that the SPONSOR and ADMINISTRATOR have adequate indemnity and Fidelity Insurance in place.

## **12. DOCUMENTS**

- 12.1. The TRUSTEES will be responsible for preparation of these RULES and any amendments thereto and will be responsible for assisting the PRINCIPAL OFFICER to obtain registration in terms of the ACT and approval of the REVENUE AUTHORITIES of these RULES and all subsequent amendments.
- 12.2. The TRUSTEES are empowered to authorise such of their members and the FUND'S officers as they may approve from time to time, and upon such terms and conditions as may be approved by them, to sign any contract or other

document binding the FUND or any document authorising the performance of any act on behalf of the FUND; provided that documents to be deposited with the REGISTRAR shall be signed in the manner prescribed by the ACT.

### 13. EXPENSES

- 13.1. Except where otherwise provided or agreed to between the BOARD and the SPONSOR, the whole of the EXPENSES in connection with or incidental to the management or administration of the FUND must be paid by the FUND.
- 13.2. If the balance in the FUND bank account is insufficient to pay these EXPENSES of the FUND, the FUND is in respect of each MEMBER entitled to reduce proportionately by way of debits to the MEMBER'S EQUITABLE SHARE, INVESTMENT ACCOUNT, CONTRIBUTION or any benefit payable under the FUND in order to pay the FUND'S EXPENSES.
- 13.3. The FUND is, in respect of each MEMBER or BENEFICIARY, entitled to reduce by way of debits to the MEMBER'S EQUITABLE SHARE, INVESTMENT ACCOUNT, CONTRIBUTION or any benefit payable under the FUND in order to pay the following current or known future EXPENSES which are specific to that MEMBER or BENEFICIARY
  - 13.3.1. Any taxes payable by the FUND in respect of or on behalf of that MEMBER or BENEFICIARY,
  - 13.3.2. fees and charges in connection with and incidental to the PORTFOLIO chosen by the MEMBER or the default PORTFOLIO selected by the BOARD, and
  - 13.3.3. any switch costs relating to that MEMBER,
  - 13.3.4. such costs incurred upon the death of that MEMBER in allocating and distributing the benefit payable in consequence of that death
  - 13.3.5. fees and charges payable to the ADMINISTRATOR
  - 13.3.6. such other EXPENSES described in the definition of EXPENSES in terms of RULE 5 as the FUND may incur in respect of that MEMBER
  - 13.3.7. any initial and/or ongoing fees payable to an AUTHORISED FINANCIAL SERVICES PROVIDER in respect of investment advice and intermediary services rendered to that MEMBER, or on any switch made by that MEMBER, provided that provider has been appointed in writing by that MEMBER; and
  - 13.3.8. the costs of tracing any MEMBER, or BENEFICIARY for the purposes of dealing with any death benefit, UNCLAIMED BENEFIT, or tracing any unallocated deposit into the FUND'S bank account
- 13.4. The SPONSOR may make such payment to the FUND to be held in the FUND'S bank account, as it may decide to meet any past or known future EXPENSES of the FUND.

#### **14. DISINVESTMENT OF MONIES PENDING TRANSFER OR PAYMENT**

- 14.1. The value of a MEMBER'S EQUITABLE SHARE for the purposes of determining a benefit due under the RULES is derived with reference to all the INVESTMENT ACCOUNTS to the credit of the MEMBER, taking all EXPENSES as provided for in the RULES into account and subject to the provisions of 14.2.
- 14.2. Unless otherwise provided in the RULES, the underlying investment options of the INVESTMENT ACCOUNTS in respect of the MEMBER shall only be realised or transferred out of the FUND in the event of a transfer of assets other than cash, after all the requirements of the ACT, the INCOME TAX ACT, the FUND, the ADMINISTRATOR or any provider of a PORTFOLIO for the processing of a benefit due under the RULES have been complied with. The MEMBER or BENEFICIARY carries the risk of loss and/or poor investment performance of the underlying investment options of the INVESTMENT ACCOUNTS pending the commencement and/or completion of the realisation or the transfer of assets other than in cash
- 14.3. Except where a transfer of assets other than in cash applies, the MEMBER'S EQUITABLE SHARE described in RULE 14.1. and realised as provided for in RULE 14.2. must be transferred to the FUND'S bank account or such other investment option determined by the TRUSTEES from time to time, or held in the name of a nominee company approved by the REGISTRAR until such time that the payment or transfer is finalised
- 14.4. The TRUSTEES shall at their discretion from time to time determine the operational practice of the FUND as provided by the REVENUE AUTHORITIES and INCOME TAX ACT with regards to the payment of any interest or "Fund Return" as defined in the ACT that may have arisen in terms of the provisions of 14.3.

#### **15. ADMISSION TO MEMBERSHIP**

- 15.1. Any person may apply to become a MEMBER of the FUND. Such application must be made to the BOARD or the ADMINISTRATOR by means of a duly completed MEMBER APPLICATION.
- 15.2. The BOARD or the ADMINISTRATOR (in the event that the BOARD has delegated this function to the ADMINISTRATOR), in its sole discretion, may approve such application.
- 15.3. Subject to Rule 15.2, a person becomes a MEMBER when his MEMBER APPLICATION FORM properly completed and signed, is accepted by the BOARD and his first CONTRIBUTION is received by the FUND;
- 15.4. Each MEMBER will, following commencement of membership, receive membership information in the format and with such detail as determined by the BOARD.

- 15.5. The membership of the MEMBER may be subject to such restriction in respect of the benefits payable in terms of the RULES as the BOARD may determine as well as such restriction as may be imposed by legislation, subordinate legislation or the rules of any retirement fund established in terms of legislation.

## **16. TERMINATION OF MEMBERSHIP**

- 16.1. A MEMBER'S membership of the FUND terminates in accordance with the provisions of these RULES. The date on which membership terminates is determined with reference to the date of death, or date of winding up of the FUND, or the date on which the MEMBER'S EQUITABLE SHARE reduces to nil, or the last day of the payment dates of monetary amounts or date of transfer of assets other than in cash in order to complete payment of a benefit transfer.
- 16.2. For the sake of clarity, membership of the FUND is always voluntary and, from the aspect of the FUND, there is no impediment, whether by way of financial penalty or otherwise, to a MEMBER voluntarily terminating his membership of the FUND. This is subject to any requirements in respect of a PORTFOLIO chosen by the MEMBER, the ACT and the INCOME TAX ACT.

## **17. REQUIREMENTS OF MEMBERS**

- 17.1. The BOARD is entitled to request any documentation prescribed by it as satisfactory proof as to the identity and right of a MEMBER or BENEFICIARY to a benefit, before payment of a benefit is made to such MEMBER or BENEFICIARY.
- 17.2. If a MEMBER or BENEFICIARY fails to submit documentary proof as set out in RULE 17.1., the BOARD may withhold payment of any benefit due to or in respect of him until the requirements are provided. The FUND will not be liable for any loss sustained by a MEMBER or BENEFICIARY arising from any misstatements or errors or omissions in any of the information supplied to the FUND by or in respect of that MEMBER or BENEFICIARY.
- 17.3. Whenever a benefit is payable to a MEMBER or BENEFICIARY, payment thereof must be by means of an electronic bank transfer to his bank account, the details of which the MEMBER or BENEFICIARY must inform the ADMINISTRATOR in writing. However, at the request of the MEMBER or BENEFICIARY, the BOARD may agree to payment of the benefit in some other manner, provided that this may not include payment in cash, and such payment is at the risk of that MEMBER or BENEFICIARY.
- 17.4. A payment made in terms of RULES 17.1, 17.2 and 17.3 will not be made in a manner which conflict with the provisions of the ACT or the requirements of the REVENUE AUTHORITIES.

## **18. MEMBER'S CONTRIBUTIONS**

- 18.1. Each MEMBER shall make at least one CONTRIBUTION to the FUND and thereafter such further CONTRIBUTIONS at any interval allowed by the BOARD.

- 18.2. The amount of each CONTRIBUTION shall be determined by the MEMBER, provided that the BOARD may set a minimum CONTRIBUTION level from time to time.
- 18.3. Subject to the consent of the BOARD and the provisions of RULE 18.1. a MEMBER may amend the rate of ongoing CONTRIBUTIONS to the FUND from time to time or discontinue ongoing CONTRIBUTIONS, provided that in the case of discontinuance of ongoing CONTRIBUTIONS, the MEMBER may elect to resume ongoing CONTRIBUTIONS at a later date.
- 18.4. A CONTRIBUTION shall be made directly to the FUND by or on behalf of the MEMBER, to be applied by the ADMINISTRATOR in accordance with RULE 28.
- 18.5. No CONTRIBUTION may be received by the FUND in respect of a MEMBER after the date that the FUND receives notification of his RETIREMENT DATE or cessation of his membership of the FUND.

## **19. TRANSFERS FROM APPROVED RETIREMENT ANNUITY FUND**

A MEMBER of the FUND may, subject to the provisions of section 14 of the ACT, transfer a benefit from another APPROVED RETIREMENT ANNUITY FUND to the FUND.

## **20. AMOUNTS TRANSFERRED TO THE FUND FROM OTHER FUNDS**

- 20.1. Subject to the provisions of section 14 of the ACT, a MEMBER may make a CONTRIBUTION by way of a transfer of a monetary amount or assets other than in cash to the FUND from such an APPROVED FUND as may be allowed by the INCOME TAX ACT. Any transfer of assets other than in cash from an APPROVED FUND is subject to the requirements of the ACT and the REGISTRAR, the agreement between the ADMINISTRATOR and the FUND, the terms and conditions that the FUND and ADMINISTRATOR may impose and subject to any fees and charges required by the FUND and/or any other party involved in such a transfer
- 20.2. A MEMBER of the FUND may transfer to the FUND his DIVORCE PENSION INTEREST from an APPROVED FUND as may be allowed by the INCOME TAX ACT as a result of his divorce from a member of that fund.
- 20.3. A MEMBER of the FUND may transfer to the FUND a lump sum which is payable to him from an entity other than an APPROVED FUND, provided that the MEMBER will indemnify the FUND against a claim by any tax authority or other entity in respect of such amount.

## **21. SURPLUS ACCOUNTS**

No reserve or surplus accounts will be maintained.

## 22. RETIREMENT BENEFIT

- 22.1. A MEMBER must retire at his RETIREMENT DATE or at any date thereafter as elected by the MEMBER, and thereupon becomes entitled to an ANNUITY. A MEMBER shall be entitled to elect to retire in respect of his EQUITABLE SHARE.
- 22.2. A MEMBER must provide the FUND with notification of his selected RETIREMENT DATE. The notice must include the options elected by the MEMBER, in particular regarding payment of a lump sum benefit of up to the limits provided in the INCOME TAX ACT, the details of the INSURER or ANNUITY PROVIDER from which the ANNUITY is to be secured and any other information which the FUND may require from time to time.
- 22.3. Subject to the provisions of RULE 14 the value available to secure the ANNUITY is equal to that which may be purchased by the MEMBER'S EQUITABLE SHARE, or the INVESTMENT ACCOUNTS in respect of which the MEMBER has elected to retire or such portion of the EQUITABLE SHARE that the MEMBER has chosen to receive as a lump sum (if applicable).
- 22.4. All ANNUITIES must be purchased from an INSURER or such other ANNUITY PROVIDER as allowed by the INCOME TAX ACT, and as selected by the MEMBER. Once the ANNUITY has been purchased and any lump sum benefit, less any applicable tax, has been paid to the MEMBER, the FUND has no further liability to or in respect of him and his BENEFICIARIES. Any ANNUITY so purchased may be commuted after purchase in accordance with prevailing legislation and the requirements of the REVENUE AUTHORITIES

## 23 ILL HEALTH RETIREMENT

- 23.1. Notwithstanding RULE 22.1 a MEMBER shall be entitled to request retirement before age 55 (fifty-five) if he is permanently incapable of carrying on his own occupation due to sickness, accident or injury or incapacity through infirmity of mind or body.
- 23.2. The BOARD must be satisfied that, based on medical evidence, the MEMBER has become permanently incapable of carrying on his occupation as contemplated in RULES 23.1. The MEMBER shall provide the BOARD with such medical evidence as the BOARD in their discretion may request. The cost of providing and obtaining the medical evidence shall be borne by the MEMBER.
- 23.3. Following the BOARD'S determination that a MEMBER is permanently incapable as provided in RULE 23.2., the MEMBER may elect to retire in terms of this RULE 23. and the provisions of RULE 22 shall apply.

## 24 LIVING ANNUITIES

- 24.1 Notwithstanding the provisions of Rules 22.2, 22.4 and 25.5, a MEMBER who qualifies to retire in terms of Rule 22 or 23 or a BENEFICIARY who becomes entitled to a benefit in terms of the provisions of Rule 25 may, in respect of the whole or part of the balance of his EQUITABLE SHARE after payment of a lump sum as allowed by the INCOME TAX ACT or in respect of his allocation in terms of Rule 25.1, elect a LIVING ANNUITY payable from the FUND.



- 24.2 The conditions relating to the payment of the LIVING ANNUITY will be mutually agreed between the MEMBER or BENEFICIARY and the FUND at the date of the MEMBER'S retirement or the date of allocation of the benefit to him.
- 24.3 The annual minimum and maximum amount of the LIVING ANNUITY must be within the percentage limits as laid down by the REVENUE SERVICE from time to time.
- 24.4 The balance of the MEMBER'S EQUITABLE SHARE of a MEMBER who retires, after paying any amount which is taken as a lump sum, or the amount of benefit allocated to the BENEFICIARY, whichever is applicable, will form the opening balance of his LIVING ANNUITY CAPITAL ACCOUNT.
- 24.5 LIVING ANNUITIES paid to LIVING ANNUITANTS will be paid from the LIVING ANNUITANT'S LIVING ANNUITY CAPITAL ACCOUNT within the FUND.
- 24.6 Each LIVING ANNUITY will be payable annually in advance, quarterly in advance, bi-annually in advance or monthly in arrears as agreed between the ADMINISTRATOR and the retiring MEMBER.
- 24.7 Each LIVING ANNUITANT must provide such evidence of his survival or continued eligibility as the BOARD may require. If such evidence is not produced, then the BOARD may direct that payment of the LIVING ANNUITY be suspended until such evidence is produced.
- 24.8 The payment of a LIVING ANNUITY will be subject to the following conditions: -
- 24.8.1 The amount of such LIVING ANNUITY will comply with the minimum and maximum amounts as referred to in Rule 24.3 and may be amended in writing by the LIVING ANNUITANT on each anniversary date.
- 24.8.2 If the LIVING ANNUITANT does not exercise his choice to amend the amount of such LIVING ANNUITY within the period as determined by the BOARD, his LIVING ANNUITY may be adjusted to an amount determined by the TRUSTEES and advised in writing to the LIVING ANNUITANT.
- 24.8.3 The LIVING ANNUITY payable to a LIVING ANNUITANT shall be paid exclusively out of the remaining credit balance of the LIVING ANNUITANT'S LIVING ANNUITY CAPITAL ACCOUNT.
- 24.8.4 If a LIVING ANNUITANT who was a MEMBER of the FUND or a BENEFICIARY prior to the commencement of his LIVING ANNUITY dies, the remaining credit balance of the LIVING ANNUITANT'S LIVING ANNUITY CAPITAL ACCOUNT will be used to provide a similar LIVING ANNUITY for such person's nominee or nominees in which case the nominee or nominees will be regarded as a LIVING ANNUITANT or LIVING ANNUITANTS.
- 24.8.5 If however, such nominee or nominees so elects or elect, the remaining credit balance of the deceased LIVING ANNUITANT'S LIVING ANNUITY CAPITAL ACCOUNT may be paid to the applicable nominee or nominees in a lump sum.

- 24.8.6 If a LIVING ANNUITANT who was a MEMBER of the FUND or a BENEFICIARY prior to the commencement of his LIVING ANNUITY dies without nominating a nominee, the remaining credit balance of the deceased LIVING ANNUITANT'S LIVING ANNUITY CAPITAL ACCOUNT will be paid to such person's estate.

## 25. DEATH BENEFIT

- 25.1. If a MEMBER dies a death benefit is payable to that person or those persons entitled thereto in terms of, and in the manner set out in section 37C of the ACT.
- 25.2. Following receipt by the FUND of confirmation of the death of the MEMBER, the BOARD shall be entitled to take such action as they may decide, which may include, but is not limited to, to switch the PORTFOLIOS/S underlying the MEMBERS'S EQUITABLE SHARE into an investment option as selected by the BOARD as they deem appropriate
- 25.3. Subject to RULE 14 the death benefit is an amount equal to the MEMBER'S EQUITABLE SHARE
- 25.4. The FUND must take all reasonable steps to trace BENEFICIARIES. If any costs are incurred as a consequence of such tracing, or of an investigation to determine the appropriate allocation of the death benefit amongst a number of potential BENEFICIARIES, such reasonable costs may, at the discretion of the BOARD, be recovered from the MEMBER'S EQUITABLE SHARE in terms of RULE 14
- 25.5. Unless the BOARD decides otherwise, the death benefit is payable as an ANNUITY purchased from an INSURER or such other ANNUITY PROVIDER as allowed by the INCOME TAX ACT, chosen by the BENEFICIARY; provided that the BENEFICIARY may within such period as the BOARD decides, elect to receive his benefit in full or in part as a lump sum benefit, subject to any tax thereon. Any ANNUITY purchased may be commuted after purchase in accordance with prevailing legislation and the requirements of the REVENUE AUTHORITIES.
- 25.6. Where the BOARD decide to make payment, in terms of section 37C of the ACT, to a trustee of a trust, a BENEFICIARY FUND or any other person contemplated in that section for the benefit of the BENEFICIARY, the BOARD may impose any term, condition or provision in relation to such death benefit so paid.
- 25.7. Once the benefit is paid, whether as an ANNUITY or as a lump sum after payment of such tax as may be applicable, the FUND has no further liability to or in respect of that BENEFICIARY.

## 26. WITHDRAWAL BENEFIT

- 26.1. In the event that a MEMBER discontinues his ongoing CONTRIBUTIONS to the FUND in terms of RULE 18.3. he may elect to receive his EQUITABLE SHARE as a lump sum benefit if his EQUITABLE SHARE is less than an amount determined from time to time by the Minister of Finance

- 26.2. In the event that the MEMBER emigrates and such emigration is recognised by the South African Reserve Bank for the purposes of exchange control, he may elect to receive his EQUITABLE SHARE as a lump sum benefit.
- 26.3. A MEMBER shall give the FUND notice in writing of his election in terms of RULE 26.1 or 26.2.
- 26.4. In the event of the withdrawal of a MEMBER as contemplated in RULES 26.1 and 26.2 above, RULE 14 will apply to the EQUITABLE SHARE and payment of the MEMBER'S EQUITABLE SHARE will be subject to the applicable tax.
- 26.5. Once the lump sum benefit, less any applicable tax, has been paid to that MEMBER, the FUND has no further liability to or in respect of him and his BENEFICIARIES

## **27. TRANSFERS TO ANOTHER FUND**

- 27.1. If a MEMBER request the FUND in the manner set out by the BOARD, his EQUITABLE SHARE must be transferred as a monetary amount or assets other than in cash, subject to section 14 of the ACT and the requirements of the INCOME TAX ACT to another APPROVED FUND, provided it is permitted by the INCOME TAX ACT. Any such transfer is subject to the provisions of RULE 14 and is net of any EXPENSE which the FUND may deduct in terms of the RULES, but no penalty is payable merely because of the transfer.
- 27.2. At the written request of the SPOUSE of a MEMBER in respect of whom a deduction applied in terms of RULE 34 as a result of the divorce of the MEMBER and his SPOUSE in terms of the DIVORCE ACT, the FUND will transfer the amount deducted in terms of RULE 34 to such APPROVED FUND, subject to the requirements of the INCOME TAX ACT, on behalf of the SPOUSE.
- 27.3. a MEMBER'S entitlement to transfer his EQUITABLE SHARE from the FUND is subject to the provisions of the ACT, the INCOME TAX ACT and the requirements of the REVENUE AUTHORITIES.
- 27.4. Once a transfer has been affected in terms of this RULE, the FUND will have no further liability to or in respect of that MEMBER and his BENEFICIARIES

## **28. BANK ACCOUNT AND INVESTMENTS**

- 28.1. A bank account shall be opened in the name of the FUND and all moneys received on account of the FUND shall be paid into such bank account and the ADMINISTRATORS shall be given appropriate signing powers to enable them to operate such account and make such investments as the TRUSTEES shall decide from time to time.
- 28.2. The TRUSTEES shall have full power, subject to the provisions of the ACT,
- 28.2.1. to lend, invest, or put out at interest, place on deposit, make advances of, or otherwise deal with all the moneys of the FUND upon such securities and in such manner as they from time to time determine, and to realise, vary, reinvest, or otherwise deal with such securities as they from time to time determine, to effect policies of insurance issued to the FUND by a person or persons lawfully carrying on insurance business within the meaning of the Insurance Act, 1943 (Act No. 27 of 1943), or to delegate, on such

terms and conditions as they shall specify, their power to make investments of any type to a sub-committee of such of their members as they may nominate, or to a financial institution as defined in the Financial Institutions (Investment of Funds) Act 1984, (Act No. 39 of 1984) or to a person approved in terms of section 4 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985) and may defray expenses incurred as a result of such delegation out of the moneys of the FUND;

- 28.2.2. to delegate the responsibility regarding investments to each MEMBER in connection with his own relevant benefit accumulation on such terms and conditions as the TRUSTEES may determine from time to time, such terms and conditions including but not by way of limitation
- 28.2.2.1. the establishment of a number of investment programmes which may be selected by the MEMBER for the purpose in whole or part of accumulation of his retirement benefit programme
- 28.2.2.2. the facility to take into account any expenses incurred in connection with the operation of the investment programmes referred to in Rule 28.2.2.1. when determining the investment returns relative to the MEMBER
- 28.2.2.3. the facility to establish an investment programme or programmes the selection of such or a combination thereof being at the discretion of the TRUSTEES in respect of the retirement benefit programme in the case of a MEMBER who does not within the period prescribed by the TRUSTEES make his own choice of investment programme
- 28.2.2.4. and the TRUSTEES shall take all reasonable steps to ensure that MEMBERS are provided with appropriate information regarding the investment programmes available for selection and the consequences of a particular selection and that the TRUSTEES shall in no form or manner influence or assist in making the decision, save for the provisions of Rule 28.2.2.3., which influence or assistance should be provided by financial advisers in the form of advice given having regard to the circumstances and whilst the TRUSTEES are obliged to take all reasonable steps to protect the interests of MEMBERS, the TRUSTEES and the FUND shall not be liable for any loss, damage or prejudice suffered or alleged to have been suffered by any MEMBER as a result of or in connection with any investment choice made or deemed to have been made by the person concerned.
- 28.3 The TRUSTEES, subject to the provisions the ACT, may obtain an overdraft from a bank, or borrow from any other party, on such terms as they think fit, such sum as they approve for the purpose of completing any investment by the FUND or bridging a temporary cash shortage.
- 28.4 The TRUSTEES, subject to the provisions of the ACT, shall have power to do all such other acts or things as are, in their opinion, conducive to the attainment of the investment objectives of the FUND.

- 28.5 A MEMBER shall elect the PORTFOLIO/S in which CONTRIBUTIONS made to the fund by him or for his benefit shall be invested. Each such CONTRIBUTION must be applied to the PORTFOLIO/S selected by that MEMBER in the MEMBER APPLICATION FORM or amendment thereof, and according to the terms and conditions relevant to each PORTFOLIO.
- 28.6 The PORTFOLIOS available to a MEMBER in terms of RULE 28.5. shall be limited to those PORTFOLIOS as selected, at the discretion of the BOARD, and made available to MEMBERS by the BOARD from time to time as the available investment options under the FUND
- 28.7 If the BOARD so decides it may establish a default PORTFOLIO into which may be invested those proceeds of a closed PORTFOLIO attributable to a MEMBER who has not elected how such proceeds must be invested, or CONTRIBUTIONS attributable to a MEMBER who has not elected a PORTFOLIO when required to do so. In this circumstance the MEMBER is deemed to have elected the default PORTFOLIO.
- 28.8 A MEMBER shall be entitled to vary his election of the PORTFOLIO/S at any time subject to any terms and conditions imposed by the BOARD, the ADMINISTRATOR and/or any provider of a PORTFOLIO from time to time and subject to any fees and charges levied by or against the FUND.
- 28.9 The MEMBER has sole responsibility for the election of the PORTFOLIO and the periodic review thereof. The FUND, the BOARD, the SPONSOR and the ADMINISTRATOR, or any of their agents and employees, will not be liable to the MEMBER (or any person claiming through the MEMBER) for the election of the PORTFOLIO, the variation thereof or the need for review thereof or the performance or failure to perform of the PORTFOLIO or for any loss to the MEMBER occasioned by investment in the PORTFOLIO.
- 28.10 The FUND is required to comply with the investment requirements of the ACT and Exchange Control legislation. The BOARD shall be entitled to, from time to time, put such measures in place as they deem appropriate to ensure such compliance in respect of the PORTFOLIO/S available to and elected by MEMBERS. These measures may include (but are not limited to) the power of the BOARD to set investment limits, remove a PORTFOLIO, and to require affected MEMBERS (after appropriate notice has been given) to switch all or so much as they have in an existing PORTFOLIO to other PORTFOLIOS, failing which the BOARD may effect such switch into a PORTFOLIO as they may determine. The FUND, the BOARD, the SPONSOR and the ADMINISTRATOR, or any of their agents and employees, will not be liable to the MEMBER (or any person claiming through the MEMBER) for any loss (whether of an income or capital nature) in respect of ensuring compliance with the legislation.
- 28.11 Monetary CONTRIBUTIONS to the FUND shall be deposited by the MEMBER or on behalf of the MEMBER into the FUND'S bank account. A CONTRIBUTION deposited into the FUND'S bank account by or in respect of a MEMBER or applicant for membership shall not be attributed to that person for the purposes of these RULES until the FUND relates that CONTRIBUTION to the MEMBER or applicant. The FUND shall not be liable to any person for any loss or damage suffered arising out of or in connection with the application of the provisions of this RULE unless it is due to the fault of the FUND that it was not able to relate the deposit to that MEMBER or applicant.
- 28.12 After initial EXPENSES (if any) have been taken into account, the net CONTRIBUTION (plus net interest where applicable) shall be invested for the benefit of the MEMBER in accordance with RULE 28.5 and subject to the provisions of the ACT and will thereafter be administered through the INVESTMENT ACCOUNT of the MEMBER.

**29. BOOKS OF ACCOUNTS**

The TRUSTEES shall cause to be kept such accounts, entries, registers and records as are essential for the proper working of the FUND. The books of account shall be made up at the end of each financial year, which shall be at the last day of MARCH and shall be audited by the AUDITOR.

**30. VARIATION OF METHOD OF PAYMENT**

30.1 If a MEMBER entitled to a cash sum benefit in terms of these Rules

30.1.1. is under legal disability, payment of the benefit shall be made, subject to the provisions of Sections 71 to 73 inclusive of the Administration of Estates Act, 1965 (Act No. 66 of 1965) to and in such manner as decided by the MEMBER'S tutor or curator

30.1.2. is, in the opinion of the TRUSTEES, a prodigal, the TRUSTEES may decide that the benefit be paid in such shares and manner as the TRUSTEES shall determine to the MEMBER'S DEPENDANTS or to a guardian or trustee for the benefit of the MEMBER; provided that the MEMBER shall have the right to appeal against the decision of the TRUSTEES.

30.2. If a person entitled to a benefit in terms of Rules 30 or any other Rule is a minor, the TRUSTEES may decide that the benefit be paid in such manner as they shall determine, to the legal guardian or trustee of such minor.

30.3. Any decision of the TRUSTEES in terms of this Rule 30 may be varied from time to time.

**31 UNCLAIMED BENEFITS**

31.1. The BOARD shall deal with an UNCLAIMED BENEFIT in their discretion, including the transfer of the UNCLAIMED BENEFIT to an APPROVED FUND for the purposes of holding UNCLAIMED BENEFITS, subject to the provisions of the ACT, the INCOME TAX ACT and any other applicable legislation.

31.2. The BOARD may agree on suitable measures to trace any MEMBER, former MEMBER, or BENEFICIARY in respect of any UNCLAIMED BENEFIT, and any reasonable costs that are incurred, and which are agreed by the BOARD under this RULE shall be dealt with in accordance with RULE 13.3. .

31.3. The BOARD shall be entitled to determine the investment option in which the UNCLAIMED BENEFIT shall be invested, which shall include the FUND'S bank account. The BOARD shall be entitled to administer an UNCLAIMED BENEFIT through an INVESTMENT ACCOUNT for the benefit of the person entitled to the UNCLAIMED BENEFIT.

- 31.4. If a person who becomes entitled to a cash sum benefit, other than as provided for in Rule 31.1., dies before payment of the benefit to him is completed, the amount due shall be disposed of by the TRUSTEES in accordance with provisions of Rule 13.3.

## **32. ROLE OF THE SPONSOR**

- 32.1. As the founding party to the establishment of the FUND and because it has certain rights and obligations in relation to the TRUSTEES and the FUND, the SPONSOR has an interest in the FUND. Accordingly

32.1.1 it may make representation to the BOARD regarding any matter relating to the FUND

32.1.2. it must be informed when any meeting of the BOARD is to be held, or a meeting of any sub-committee duly mandated by the BOARD

32.1.3. it may, if invited, attend any part or whole of any meeting of the BOARD or such sub-committee

32.1.4. has the right to see performance evaluations of any TRUSTEES

32.1.5. has the right to market the FUND at the FUNDS cost, provided the BOARD approved the marketing material to be used, which may not be unreasonably withheld

32.1.6. is entitled to see the financial statements and valuations in respect of the FUND

- 32.2. The SPONSOR, may as a service to the FUND, facilitate access to one of its own representatives, in order to provide any MEMBER or BENEFICIARY with financial planning advice aimed at assisting the MEMBER or BENEFICIARY to determine his or her risk tolerance for purposes of making an investment decision in respect of any benefit that becomes payable under these RULES. The FUND is not liable for any damages suffered by any person as a result of any advice given or for any failure by any MEMBER or BENEFICIARY to seek or follow any advice

- 32.3. The BOARD is independent from the SPONSOR and must at all times act in the best interest of the FUND, its MEMBERS and their BENEFICIARIES. It owes the SPONSOR no fiduciary duty, but must take cognisance of any request by the SPONSOR

### **32.4. CHANGE OR WITHDRAWAL OF SPONSOR**

32.4.1. The FUND may exist without the SPONSOR if the SPONSOR agrees to this. The FUND is not entitled to request the SPONSOR to withdraw from it.

32.4.2. The SPONSOR has the right to withdraw from the FUND on 6 (six) months written notice to the FUND. Following such withdrawal, all rights and obligations of the SPONSOR in relation to the

FUND or any TRUSTEE lapse and are of no force and effect, subject to the other provisions of this RULES 32.

32.4.3. If the SPONSOR withdraws from the FUND then:

32.4.3.1. the indemnity of the SPONSOR in terms of RULE 16 is cancelled in respect of all future acts or omissions of each TRUSTEE on the effective date of the withdrawal of the SPONSOR

32.4.3.2. The SPONSOR may without the consent of the FUND and on 6 (six) months notice assign its rights to the FUND as SPONSOR to any person which must assume all the obligations and rights of the SPONSOR

32.4.3.3. If the SPONSOR withdraws from the FUND or assigns its right as SPONSOR to another person then the SPONSOR may at the time of the notice withdraw or assignment require the FUND at the effective date to change the name of the FUND and any branding of the FUND established by the SPONSOR

### **33. INDEMNITY BY SPONSOR**

Each TRUSTEE and PRINCIPAL OFFICER enjoys an unlimited indemnity from the SPONSOR for any act or omission by him whilst in office for which such TRUSTEE or PRINCIPAL OFFICER may be liable to a claim for damages to the FUND, a MEMBER, a BENEFICIARY, or any 3<sup>rd</sup> (third) party provided that:

33.1. Without limiting the generality of this indemnity, this includes an indemnity to the claim in respect of advice given by the SPONSOR or the ADMINISTRATOR to a MEMBER or financial planning advice

33.2. this indemnity does not apply to the extent that a TRUSTEE or the PRINCIPAL OFFICER is indemnified by any insurance cover taken out by the FUND or the SPONSOR or such loss referred to above for which he may be liable;

33.3. this indemnity cover does not apply in respect of any loss caused by such TRUSTEE or PRINCIPAL OFFICER as a result of gross negligence or dishonesty of such TRUSTEE or PRINCIPAL OFFICER

33.4. this indemnity applies after withdrawal of the SPONSOR in respect of any act or omission for which any TRUSTEE or the PRINCIPAL OFFICER may be liable which took place prior to such withdrawal;

33.5. this indemnity includes, without limiting the generality of the indemnity, all legal expenses incurred by any TRUSTEE or the PRINCIPAL OFFICER in defending himself against any claim, provided the SPONSOR approved such legal expenses or the TRUST or PRINCIPAL OFFICER was successful in such defence



- 33.6. the TRUSTEE or PRINCIPAL OFFICER notifies the SPONSOR in writing of the claim within 3 (three) days of receipt of a letter of demand or the service upon him of any summons, notice of application to a court or any document whereby legal proceedings are instituted against the TRUSTEE for damages falling within the scope of the above indemnity.
- 33.7. the TRUSTEE or PRINCIPAL OFFICER gives the SPONSOR the sole control over the defence of the claim (including the right to lodge an appeal to the highest court having jurisdiction to adjudicate in the matter) as well as any negotiation, settlement and compromise of the claim, and
- 33.8. the TRUSTEE or PRINCIPAL OFFICER provides reasonable assistance, in good faith, in the defence of the claim

#### **34. DEDUCTIONS FROM BENEFITS**

The provisions of sections 37A, 37B and 37D of the ACT will apply in respect of the reduction of benefits, deductions from benefits and on the insolvency of a MEMBER.

#### **35. TERMINATION OF THE FUND**

- 35.1. Subject to the provisions of the ACT the FUND may be dissolved by the BOARD or by order of the court, in which event the BOARD or court shall appoint a liquidator, subject to the approval of the REGISTRAR.
- 35.2. In the event of the BOARD deciding to dissolve the FUND, the BOARD shall give the MEMBERS and the SPONSOR 3 (three) months notice of the intent to dissolve the FUND.
- 35.3. The liquidator shall be charged with the duties to ensure that:
- 35.3.1. no CONTRIBUTIONS may be received by the FUND after the date of liquidation (being the effective date of the appointment of the liquidator by the REGISTRAR)
- 35.3.2. any benefits which become payable in terms of the RULES prior to the date of liquidation but have not been paid, are paid
- 35.3.3. at the discretion of the liquidator, the EQUITABLE SHARE in respect of MEMBERS remaining in the FUND (after EXPENSES, including EXPENSES incurred during the liquidation, have been taken into account) shall be transferred for the exclusive benefit of the MEMBER concerned to any other APPROVED RETIREMENT ANNUITY FUND or be dealt with in such manner as legislation may allow, subject to the requirements of the REGISTRAR, the ACT and the REVENUE AUTHORITIES. For purposes of this RULE, "MEMBER" shall exclude all MEMBERS whose membership has terminated prior to the date of liquidation and shall in particular exclude those MEMBERS whose membership have ceased during the 12 (twelve) months immediately prior to the date of liquidation.

35.3.4. all UNCLAIMED BENEFITS shall be paid to a fund registered in terms of the Taxation Laws Amendment Act to receive UNCLAIMED BENEFITS

35.3.5. once the liquidator is satisfied that the FUND has discharged all of its liabilities and that the FUND owns no further assets, then the liquidator shall apply to the REGISTRAR for the registration of the FUND to be cancelled.

## **36. AMALGAMATION**

The BOARD may decide to amalgamate the business of the FUND with any other APPROVED RETIREMENT ANNUITY FUND. Subject to the requirements of section 14 of the ACT and the necessary approval granted for the transaction, the FUND shall request the REGISTRAR to cancel the registration of the FUND in terms of the ACT after all the assets and liabilities of the FUND have been transferred to the other fund.

## **37. ALTERNATIVE BASIS OF DISSOLUTION OR AMALGAMATION**

The TRUSTEES may agree on an alternative basis of dissolution or amalgamation subject to the relevant provisions of the ACT or the requirements of the REGISTRAR.

## **38. CURRENCY**

CONTRIBUTIONS and benefits are payable in the currency of the Republic of South Africa

## **39. RIGHT TO OBTAIN COPIES OR TO INSPECT CERTAIN DOCUMENTS**

39.1. The FUND must deliver to any MEMBER on his request and on payment of an amount to cover any photocopying, printing and related costs, a copy of the RULES

39.2. Every MEMBER is entitled to inspect without charge at the registered office of the FUND, a copy of the documents referred to in RULE 39.1. as well as any of the documents referred to in sec 35(2) of the ACT and to make his own extracts there from

39.3. The fee payable for the making and delivery of a copy of any document referred to in RULE 39 shall be as determined by the BOARD from time to time.

## **40. LIMITATION OF THE FUND'S LIABILITY**

In the event of a loss suffered or an EXPENSE incurred by the FUND, which cannot be recovered in terms of any Fidelity or Professional Indemnity Policy effected by the BOARD, or cannot be recovered from the responsible party, the BOARD, may in their discretion, reduce each MEMBER'S EQUITABLE SHARE on a pro rata basis

**41. NOMINATION OF NOMINEES AND DEPENDANTS**

- 41.1. a member shall provide the FUND with notification of his nominated NOMINEES and DEPENDANTS and of any change to such nomination
- 41.2. The nomination of a NOMINEE or a DEPENDANT shall apply to a MEMBER'S EQUITABLE SHARE and not per INVESTMENT ACCOUNT and shall take effect when received by the FUND at the head office of the ADMINISTRATOR. The BOARD is not required to accept any such nomination or change to such nomination received after the death of the MEMBER.

**42. ALTERATION OF RULES**

The BOARD may amend the RULES at any time by a majority of votes provided that:

- 42.1. the amendment(s) is not inconsistent with the provisions of the ACT and of the INCOME TAX ACT
- 42.2. the amendment(s) does not affect the value of each MEMBERS EQUITABLE SHARE negatively prior to such amendment, or
- 42.3. any amendment(s) which affects the rights and obligations of the SPONSOR is approved by the SPONSOR, and
- 42.4. an amendment affecting the financial basis of the FUND is referred to the ACTUARY for his comments before being adopted