

Is Bulking Unlawful?

- The Registrar in paragraph 2 of the circular, refers to the Financial Institution (Protection of Funds) Act and the Financial Advisory and Intermediary Services Act, however on closer scrutiny there is nothing in these Acts that deal with bulking and obligations in respect thereof.
 - In terms of Section 45(1)(a)(iii) the FAIS Act, FAIS does not apply to Section 13B Pension Fund Act administration “to the extent that the rendering of financial services is regulated under the Pension Funds Act.” FAIS is therefore not relevant to the bulking by Administrators.
 - The Financial Institutions Act relates to the fiduciary duty of individuals and not therefore the administrator.

Bulking (Continued)

- With reference to paragraph 3 and 4 of the circular, we are in agreement that it would be unlawful not to pass on interest proportionately to each fund, allowing the administrator alone to benefit, which would result in the members of the Funds being prejudiced.
 - Bulking of bank accounts is put in place to reduce the overall bank charges across the board and the interest yielded is then proportionately allocated to enhance the members benefits by reducing the overall costs and adding interest income.
 - The concept of good business practices is to increase efficiencies and reduce the overall costs for the Funds, thereby allowing a larger amount to go towards a member's retirement funding
 - It follows that there is an administration function involved with bulking, for which a disclosed fee can be taken
- Should the committee not seek to consider the administrators that have not bulked to reduce overall costs for their funds.

Disclosure

- We are in agreement that disclosure of bulking should be made, however the extent and format thereof has to be regulated.
- Is Disclosure of the Principal or Disclosure of the Quantum paramount?
 - Some Administrators charge a Flat fee of R150 per fund to participate in their bank bulking arrangement. Paying the same higher interest rate to all participating funds irrespective of the balance in the funds bank account. The smaller funds benefiting from being bulked up with the larger funds. However, the flat fee results in the smaller funds incurring proportionately a larger share of the fee than the larger funds. Here Quantum has been disclosed, however the fairness of this practice is debatable?
 - Some administrators disclose their bank bulking arrangement sharing in a proportionate amount of the interest earned, after deducting the bulking fees and additional bank charges. This bulking has the effect of reducing the overall bank charges, by providing a fixed lower bank charge per fund per month and an increased rate of interest earned proportionately. In this situation we have disclosure but the calculation of quantum could far exceed the benefits derived.

Disclosure (Continued)

- We have made disclosure to our Funds in that we make use of bulking in respect of our bank accounts, however this was done not because we deemed it to be a regulatory requirement but rather a marketing tool as it highlighted the effectiveness and efficiencies of our bulking arrangement, which benefited the participating funds.
- Some of the benefits include:
 - Fixed reduced monthly bank charges
 - Interest can now be earned by the fund bank accounts
 - Integrated system allows for efficient and cost effective processing
 - Further benefits are highlighted in our letter to the Financial Services Board attached hereto marked Annexure B.

Implication of Retrospective Application

- Alexander Forbes in a recent newspaper article has undertaken to repay R380 million to its funds?
 - What is the implication and practicality to the administrator in the distribution to the members?
 - Who will bear the cost of this calculation and the administration to distribute this money to the current members as well as to the former members?
 - Will the cost exceed the benefit by member?
- It is in my opinion that this committee could instill the confidence into the Financial Services Sector, which in turn results in members and administrators feeling confident in the Retirement Fund Industry. The committee needs to take into account the following factors:
 - Bulking is not illegal
 - Taking into account the implications of making its pronouncement retrospective
 - Penalizing the entrepreneurial spirit for putting in place a structure that benefited the clients and the administrators proportionately.

Implication of Retrospective Application (Continued)

The situation may exist where investors do not want to become a Section 13B Administrator, or may not look at other opportunities that would benefit clients, as they would become too afraid to act for fear of future regulatory determinations. A clear set of guidelines needs to be put in place so that Administrators are aware of the parameters in which they can operate. This will enable the entrepreneurs to use their skills to look at ways to reduce and make fees more cost effective within this regulatory framework. Nothing should be left to interpretation, but as stated in your invitation their obligations and conditions in which they operate must be clear. Confidence needs to be restored so that members feel protected and that no excuse can exist for not putting into place some form of Retirement Savings.

Conclusion

- Did we consider our bulking arrangement unlawful? NO
- Did we deem our disclosure to be sufficient? YES
- Did our members benefit from our bulking arrangement? YES