

FSCA COMMUNICATION 2 OF 2019 (PFA)

EXEMPTION FROM REGULATION 37(2)(g) OF THE REGULATIONS UNDER THE PENSION FUNDS ACT, 1956 INsofar AS IT RELATES TO HYBRID ANNUITIES

1 August 2019

1. Background

- (1) The Authority is aware that funds have considered and are contemplating offering to their members the option of a hybrid annuity on retirement as part of their annuity strategy. Based on the representations received by the Authority, the benefit of the hybrid annuity is that it provides, at least in part, longevity risk protection within a living annuity and the ability to secure additional tranches of longevity protection over time.
- (2) Qualifying hybrid annuities should deepen the annuities markets, enhance customer choice, provide value to customers and thereby encourage retirees to annuitise and be protected from old age poverty.
- (3) Regulation 39 provides for the inclusion of living annuities as part of a fund's annuity strategy and regulation 39(3)(a) provides that such a living annuity must, amongst other conditions, comply with regulation 37 (read in the context of the fund's annuity strategy). Regulation 37(2)(g) provides that boards of funds must ensure and be able to demonstrate to the Authority that:

“where member investment choice is provided in the rules, members may, at least once every twelve (12) months, instruct the fund to transfer their retirement savings from their default investment portfolio into any other investment portfolios offered in terms of investment policy statement, in respect of which transfer the fund may deduct reasonable costs.”

- (4) A life annuity has no viable surrender value. It would not be in the interests of members to be allowed to transfer out of the life annuity portfolio at least once every 12 (twelve)

months because the surrender value will be significantly less than the interest held in a life annuity.

- (5) The FSCA has also consulted with the National Treasury and SARS to enable hybrid annuities to be considered as part of the default regulations dispensation.

3. Applications for Exemption from Regulation 37(2)(g)

- (1) The Authority will consider applications for exemption from funds to which regulation 39(3)(a) applies to be exempted from regulation 37(2)(g) insofar as it relates to any hybrid annuity offered by a fund.
- (2) The Authority must be satisfied that the granting of the exemption in subsection (1) will not be contrary to public interest nor will it prejudice the achievement of the objects of the default regulations. Hence such exemptions will only be granted if the fund is able to, at least, satisfy the conditions set out below.
- (3) Such applications must be submitted in the format as set out in Annexure B.

4. Conditions

- (1) In applying for an exemption from regulation 37(2)(g), the fund must confirm that the following conditions will be met:
 - (a) The nature of the hybrid annuity will be clearly communicated to the member when the member receives retirement benefits counselling;
 - (b) The retirement benefits counselling will be done in person and the fund will retain a record of the retirement benefits counselling provided to the member;
 - (c) The retirement benefits counselling that is provided by the fund will specifically draw attention to the fact that the member will not be in a position to transfer to another insurer in respect of the life annuity portfolio. If the member elects the hybrid annuity then the member must expressly indicate their acceptance of the aforesaid in writing; and

- (d) The fund will permit a member who chooses the hybrid annuity the option to transfer it to another service provider that will accept the hybrid annuity, with the associated life annuity portfolio, at least once every 12 (twelve) months.

6. Enquiries

For further information regarding this Communication please email Naheem Essop at Naheem.Essop@fscs.co.za

Definitions

In this Communication, “the **Act**” means the Pension Funds Act, 1956 (Act No. 24 of 1956) and the “**FSR Act**” means the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), and any word or expression to which a meaning has been assigned in the Act or the PFA shall have the meaning so assigned to it unless a different meaning is assigned elsewhere in this Communication, and –

“**the Authority**” means the Financial Sector Conduct Authority established in terms of section 56 of the FSR Act;

“**default regulations**” means regulation 37, 38, 39 and 40 made in terms of section 36 of the Act;

“**hybrid annuity**” is a living annuity as defined in section 1 of the Income Tax Act, 1962, which has a life annuity portfolio as one of its investment portfolios;

“**life annuity portfolio**” is a portfolio of life annuities that provides market values and is underwritten by an insurer licensed to conduct life insurance business under the Insurance Act, 2017 (Act 18 of 2017);

“**life annuity**” is a life annuity as described in Table 1 of Schedule 2 of the Insurance Act, 2017 (Act 18 of 2017);

“**living annuity**” is a living annuity as defined in section 1 of the Income Tax Act, 1962 (Act 58 of 1962).