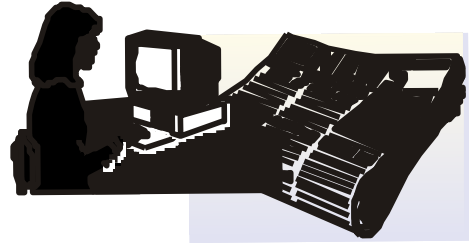




**FINANCIAL SERVICES BOARD**



## **MEDIA RELEASE**

The inspection report relating to Fedsure Life, the long-term insurer which was taken over by the Investec Group, has been released after the high court granted the Financial Services Board (FSB), permission to make it public.

At the root of the inspection were the interests of Fedsure Life's policyholders. The inspection was a fact-finding mission aimed at uncovering the truth of what happened at Fedsure Life specifically regarding corporate governance matters and policyholders' reasonable benefit expectations.

What also prompted the inspection was the need for an objective consideration of the appropriateness of the legislation and the effectiveness of the supervisory practices of the FSB as they stood at the time; and whether any legislative changes were necessary.

The FSB instituted a thorough investigation into the affairs of Fedsure Life so that the truth about what happened in the company could be determined. The investigation covered the affairs of Fedsure Life over a period of four years. The FSB was convinced that the public interest required the truth to be ascertained as many of the affected policyholders and pension fund members were ordinary people who could not understand what went wrong with their life savings.

It should be emphasised that the inspection was not ordered because Fedsure Life was at the time, or afterwards, found to be failing in the prescribed capital asset requirements or solvency margins; or that irregularities in the sense of statutory contraventions or dishonesty or improper actions had been brought to the attention of the FSB; or that it was in danger of being unable to meet its contractual commitments, or similar regulatory matters which normally induce an inspection.

Public concerns were aggravated by media reports on the forfeited bonus and the take-over negotiations between the Fedsure Group and the Investec Group which centrally involved Fedsure Life.

## **Status of an inspection report**

An inspection is purely investigative by nature, or a fact-finding exercise, and the report is the record of those findings, as well as the inspectors' own conclusions from the facts as they found or interpreted them. The report represents the inspectors' views and is not binding on the policyholders, the company, the Registrar or other interested parties. It is the result of an independent probe into those facts, done by experienced experts during an extensive investigation, an exercise which no policyholder or group of policyholders could remotely undertake. The inspectors do not cross-examine and their finding of facts, expression of views or conclusions are not binding in law. None of the witnesses were entitled to cross-examine other witnesses or to present their own evidence.

## **Reasons for publication**

The report will in many respects send a strong but useful message to the insurance industry and its associates, such as investment managers that their conduct is susceptible to disclosure through an inspection. At the very least it will stimulate debate on vital governance matters, such as the duties and responsibilities of the directors of financial institutions towards investors and policyholders. Boards of directors will review the appropriateness of their policies and practices until now.

The report could be seen as a treatise on long-term insurance business for all those not knowledgeable in the field. Non-executive directors of life insurers are likely to appreciate henceforth that their role is not limited to the introduction of external expertise in the company. The same applies to professionals like actuaries and auditors who play a vital role in the regulatory and supervisory framework and must appreciate that, like the regulator, they may be held accountable publicly.

It is the opinion of this Office that the report as a whole will set new standards for the life industry and certainly have positive effects on the level of responsibility of all those associated with the industry; not least the regulator.

In recent years - since the promulgation of the Long-term Insurance Act and the Inspection Act - the tide has turned overwhelmingly in favour of openness, full disclosure, accountability, access to information and the rights of the consumer.

## **Findings**

The report contains no findings of statutory contraventions, criminality, dishonesty, fraud or bad faith. In their key findings the inspectors state that the company was found never to have been in an unsound financial position, nor did it renege on any of its contractual commitments. There would be no reason whatsoever for this Office to publish the report for purposes of cautioning the public against a specific financial institution. There would, however, be every reason to publish the report as a message to all participants in this type of

business - both industry and consumer - that "despite good faith, good intentions, and many skills" (to quote the inspectors) things can go wrong, and need to be actively watched and properly managed at all times.

The Registrar of long-term insurance will thus not refer the report to the prosecuting authorities. However, the legislative proposals in the report have for some time been receiving attention.

### **Procedure**

Besides the terms of reference given to the inspectors and some guidelines from this Office as to what documentation and which persons ought to be examined, it was left to the inspectors to conduct the investigation in the manner they deemed fit in order to report as they were required to do.

The investigation and the record of findings took eleven months, from mid May 2002 to end April 2003, when the final report was handed to this office. Copies were made available by this office to a number of interested parties to enable them to comment. The dispensation of fair administrative justice played a role in making copies available to the interested parties.

Those parties were invited to comment on the contents of the report. Comments were received, mainly from the parties represented by attorneys. These were copied to the inspectors with the request to consider the issues raised, and to the extent deemed necessary by the inspectors, to deal with, incorporate or clarify in their final report.

The inspectors delivered their final report to this office on 23 April 2003. Copies were once again made available to all those parties who had previously commented on the report.

### **Value of report**

The publication of the entire report, and the public discussions which will undoubtedly follow, presents a lesson to the consumer on various aspects: the intricacies, advantages and risks associated with this type of investment; that it is a long-term investment; that unpredictable external factors such as the capital markets may influence the investment positively or negatively; that would-be policyholders should ask questions and satisfy themselves on matters such as the track record of the company and the proficiency of its management; and that policyholders should keep on enquiring about the activities of their insurer in respect of take-overs, mergers, financial results, major changes in management or shareholders, and the like.

If the report is viewed in its totality, it is a treatise on what long-term insurance business is or should be about. Millions of parties participate in this business directly through being policyholders or indirectly through being members of pension funds. All will benefit by reading the report, or expert analysis of it, which is likely to emerge from the publication of the report.

The report sets out the historical events and factual findings over the period 1998 to the date the investigation started; then follows an analysis of the conduct of the FSB (the actions of the regulator over the relevant period); thereafter the inspectors express their views on the professional conduct of the executives, non-executive directors and management of Fedsure Life; then certain critical questions are posed (including whether the reasonable expectations of policyholders have been met) and answered.

The inspectors dealt with vexed questions of law on matters such as directors' fiduciary duties, the care and diligence imposed by law. Finally, the inspectors propose recommendations to the industry and other role players, such as actuaries, auditors, ombudsmen and the regulator.

The report is a comprehensive document. To appreciate its contents the whole report needs to be scrutinised. To leave out any part, will break the context.

### **Way forward**

The inspectors have also made several recommendations that are being studied to ascertain the likely effect they might have on the industry and the regulatory framework. The Registrar is giving urgent attention to the following:

- The demarcation of shareholders' and policyholders' assets and enforcement of asset liability management principles and procedures.
- The revisiting of the Regulations pertaining to investments from a solvency point of view as well as the spreading of assets, distinguishing between those assets covering the liabilities and the free assets.
- The imposition of a compulsory annual analysis of surplus in a more detailed form than the current basis.
- A re-evaluation of corporate governance requirements, the role of the independent non-executive director, the terms of reference of board committees, communications between the board and management and the statutory enforcement of selected elements thereof in a transparent environment.
- An evaluation of the marketing, disclosure, product design, pricing and investment mandates of the family of smoothed bonus policies.
- An assessment of the independence and statutory powers and responsibilities of specifically the statutory actuary and the approved auditor(s) of the company.
- More effective measures to protect the interests of policyholders in the event of takeovers and mergers;
- The establishment of an integrated ombud system to deal with consumer complaints against financial institutions.

The report is available on the website of the Financial Services Board at [www.fsb.co.za](http://www.fsb.co.za)