



FINANCIAL SERVICES BOARD

FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002 (ACT 37 OF 2002)

WITHDRAWAL OF FAIS CIRCULAR 03/2010

Issue Date	Effective Date
28 November 2013	28 November 2013

I, Caroline Dey da Silva, the Deputy Registrar of Financial Services Providers, hereby withdraw the *Circular on the application of "living annuities" in relation to "Long-term Insurance Category C" and "Retail Pension Benefits" as defined in the FAIS Act, FAIS Circular 03/2010*, with immediate effect.



CD DA SILVA
DEPUTY REGISTRAR OF FINANCIAL SERVICES PROVIDERS

FINANCIAL SERVICES BOARD



FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002 ("FAIS ACT")

FAIS CIRCULAR 03/2010

DATE: 5 May 2010

Circular on the application of "living annuities" in relation to "Long-term Insurance Category C" and "Retail Pension Benefits" as defined in the FAIS Act.

1. Background

The Office of the Registrar of Financial Services Providers has received a number of queries regarding as to how products classified as "living annuities" should be treated in relation to the relevant product categories. The Registrar has therefore deemed it appropriate to provide the following explanation for information purposes.

Living annuities can be dealt with in a number of different ways, which will be described below.

2. Ex-retirement fund i.e. the Fund provides the annuity.

This can be done in one of two ways.

a. The first scenario:

- i. When the member of the fund retires, the fund in which the member's benefits accrued uses the assets that have accumulated for that member to provide the member with a pension.

- ii. If the member chooses a living annuity, then the member chooses the underlying investments that are made available to him by the fund for his choice, as well as an income level within the parameters set by the Income Tax Act.
- iii. The member remains a member of the fund and accordingly the fund trustees retain their responsibilities towards the member.
- iv. The member has all of the protections (and any restrictions such as s37C in respect of dependants having preference over death benefits) under the Pension Funds Act.
- v. The living annuity will operate within the ambit of the Income Tax Act, the Pension Funds Act and the Fund rules.

b. The second scenario:

- i. Exactly the same as above except that the trustees of the Fund decide for whatever reason, that they will outsource pension provision to one or more Long-term Insurers.
- ii. The Fund takes out the policy of the member's choice, and although the member pensioner makes all the investment decisions around investment choice and income levels, the ownership of the policies vests with the Fund, and the policies are assets of the Fund.
- iii. All of the legal consequences are the same as the first option above. This tends to be called a "purchased" annuity.

c. Implications for a FSP, Key Individual and Representatives that gives advice and/or renders an intermediary service in either of these two scenarios:

- i. As the advice relates to the Pension Fund's activities you must be authorised (as the FSP), approved (as the Key individual) and/or be appointed (as the representative) for the subcategory **Retail Pension Benefits**.

3. The Pension Fund divests itself of responsibility for provision of pensions – these are sometimes referred to as “GN 18” annuities (originally structured in terms of SARS’s General Note 18 – now superseded by regulations under the Income Tax Act).

- a. There are three possible scenarios that apply here:
 - i. It may be compulsory, under the rules of the specific Pension Fund, for the Fund to divest itself of the responsibility of providing pensions.
 - ii. The member of the Pension Fund may be given this as an option to exercise.
 - iii. The third option is that the Pension Fund decides to convert from a structure as described in section 2 above, to this type of structure.
- b. What happens in this scenario is that the assets that have accumulated in the Pension Fund to provide the member’s pension are transferred out of the Pension Fund to a Long-term insurer.
 - i. The insurer issues a policy in the name of the member – not in the Fund’s name as in (2)(b) above.
 - ii. The Fund’s rules provide that the fund has no further obligations towards the member.
 - iii. The member is now on his own, with no trustees with any responsibilities to look out for his interests.
 - iv. The Pension Funds Act no longer applies – only the Long-term Insurance Act.
 - v. The advantage for some members is that they can elect to appoint whoever they like as beneficiary when they die –because s37C of the Pension Funds Act that requires the trustees to ensure that dependants are catered for before non-dependant nominees are considered, does not apply.
- c. Implications for a FSP, Key Individual and Representatives that gives advice and/or renders an intermediary service in this scenario:

- i. If the Fund rules give the member no choice but to go into a living annuity policy, and the member has no choices to make, then you must be authorised (as the FSP), approved (as the Key individual) and/or be appointed (as the representative) for the subcategory **Long-term Insurance Category C**.
- ii. If the member has a choice in the matter, and is weighing up his options whether to remain in the Fund as a living annuitant pensioner member or whether to relinquish Fund membership and take out a living annuity policy, then you must also be authorised/ appointed for the subcategory **Retail Pension Benefits**.

4. Appropriate action by the FSP

- a. Should an FSP realize that it has been rendering financial services in respect of living annuities without being approved for the correct license category, it needs to contact the FAIS Registrations Department within 90 days of the issuance of this circular, to arrange for the situation to be corrected.
- b. A covering letter, explaining the situation and what corrective action is required, should be provided.
- c. This must be accompanied by:
 - i. The relevant application forms (FSP 2, 4 and/or 5)
 - ii. Proof of payment of the relevant fee
 - iii. Proof of the rendering of such financial services (confirmation from a Pension Fund/ Long-term Insurer) should be attached to the letter

REGISTRAR FINANCIAL SERVICES PROVIDERS