

31 May 2011

Deputy Registrar of Pension Funds – Mr Jurgen Boyd  
C/o Wilma Mokupo  
Financial Services Board  
Riverwalk Office Park,  
Block B 41 Matroosberg Road (Corner Garsfontein and Matroosberg Roads)  
Ashlea Gardens, Extension 6  
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0081

**SENT VIA E-MAIL: Wilma Mokupo – [wilmam@fsb.co.za](mailto:wilmam@fsb.co.za)**

Dear Mr Boyd,

**RE: APPLICATION FOR EXTENSION OF COMPLIANCE WITH REGULATION 28 TO THE PENSION FUNDS ACT 24 OF 1956 (“the Act”)**

This application is pursuant to the publication of regulation 28 in *Government Gazette* number 34070 on the 4<sup>th</sup> of March 2011.

The application is by the following section 13B fund administrators:

- Liberty Group Limited (“Liberty”);
- Liberty Private Fund Administrators Limited;
- Capital Alliance Life Limited; and
- Rentmeester Assurance Limited.

This application is in the capacity as the registered section 13B fund administrators of the retirement funds under their administration, on behalf of the boards of trustees (“the Trustees”) of these funds, which funds are listed in the annexure hereto.

These funds will collectively be referred to as the Funds.

Copies of this application will be sent to all the Funds listed in the annexure hereto.

Employers select to participate in these Funds to ensure savings for the benefit of their employees, for retirement. Employers achieve this with assistance from the employers' financial advisers.

In addition to Liberty being the registered section 13B fund administrator of the Funds, Liberty is also the long-term insurer providing benefits to the Funds, for their members, by way of fund policies. Thus the Trustees are reliant on Liberty's capability to administer the investment portfolios underlying the policies as long-term insurer.

The policies issued to the Funds provide the option, mainly to the employers but sometimes to individual members to invest, at their choice, in a variety of investment portfolios, offered and managed by Liberty and external asset managers by way of pooled funds and unit trusts. As a result of the financial advice obtained from their financial advisers, the employers or members may have chosen, and may currently continue to choose investment portfolios which are by their nature non-compliant at a fund member level.

The financial advisers are all accredited in terms of the Financial Advisory and Intermediary Services Act and therefore should understand and comply with the new requirements of regulation 28. However the Funds' Trustees feel it prudent to have further checks and balances ensuring compliance at the administration level. Without these, full compliance cannot be appropriately monitored and guaranteed. The proposed course of action is therefore to create the appropriate administrative mechanisms to ensure the appropriate advice falls within the prudential limits.

Liberty's compliance in terms of the Long-term Insurance Act ("the LTI Act") is to ensure that policies of insurance provided to its policyholders are either linked or non-linked policies. Liberty's policies were interpreted to be non-linked, as they do not hold assets in respect of the liabilities of each policy.

Due to the fact that Liberty's policies are non-linked in terms of both the LTI Act and the Act, a breakdown of investment portfolios into their constituents was not required under the previous version of regulation 28. However, the Funds at a composite level would have complied with the prudential guidelines.

Due to the fact that Liberty's policies were interpreted to be non-linked, the Funds were not subject to the previous version of regulation 28 and the corresponding reporting requirements.

To the extent that non-linked policies are provided through the Funds to members, the applicability of the amended regulation 28 is unclear, since the current legal position regarding the requirements of guarantees and partial guarantees has not been clarified. Since Liberty provides guarantees on some but not all portfolios, there is a lack of clarity in relation to compliance with the amended regulation 28 is or is not required.

Even once clarified, which we anticipate will be the position once the guidelines regarding guarantees have been issued, Liberty will still require time in order to determine, at a fund member level, where alterations may be necessary to ensure compliance. In addition, further clarity is required in terms of the use of derivatives.

The Trustees and Liberty want to comply with the spirit of the amended regulation 28. However, Liberty has advised the Trustees that they currently are unable to comply with certain requirements of the revised regulation 28 as set out in more detail below.

To this end, the Trustees respectfully apply for the following extensions in respect of the following aspects of regulation 28:

**1. Compliance at member level where the fund provides individual member choice in terms of sub-regulation 28(3)(b) –**

**Issue:** Liberty Group Limited (“Liberty”) as the fund’s section 13B fund administrator is currently unable to monitor compliance at member level.

Due to the fact that Liberty’s policies are non-linked, a break-down of the constituent holdings was not required by regulation 28. As member level compliance was not in force, policyholders were permitted to choose investment portfolios which were non-compliant at a member level. Consequently, Liberty’s systems functionality and other processes were not designed with the intention or requirement of managing member level compliance.

**Path towards compliance:**

While most of the investment portfolios made available to members are compliant, certain portfolios require limitation in order to achieve compliance at a member level. Liberty is in the process of developing its systems and business processes to enable it to monitor member level compliance with the asset limits set out in regulation 28.

Business processes and systems need to be altered and enhanced, and communications with employers and members need to take place in order for alterations to be made where there is currently non-compliance. This development is expected to take approximately 15 months.

A significant external dependency is the ability of external managers to be able to deliver the necessary data.

To this end, extension to comply at a member level is respectfully sought until the 1<sup>st</sup> of September 2012.

2. **Some of the portfolios offered on the Funds are such that the asset limits of Table 1 to regulation 28 are exceeded.**

**Issue:** Property included in prudential portfolios offered to members

There are a number of investment portfolios offered by Liberty which have an allocation to unlisted property, consistent with the previous version of regulation 28, but which exceed the new requirement of 15%. Liberty is of the view that its current portfolio of unlisted properties is suitably diversified and the Liberty balance sheet delivers the appropriate liquidity so that the rationale for the tighter restriction should not apply. A significant need to realise property investments in order to reduce property holdings from 20% to 15% may impact underlying valuations of the unlisted properties. To reduce the holding of property may also not be in the fund members' best interests.

**Path towards compliance:**

Liberty will apply separately for exemption from regulation 28 in respect of those portfolios with a greater than allowed allocation to unlisted property.

**Issue:** Cash portfolios may be invested in one bank above the 25% limit.

Liberty manages all cash centrally. There are times when general policyholder liquidity requirements dictate that the limit with one bank may be breached temporarily. Therefore, compliance cannot be guaranteed at all times for policyholders invested in this block only. Currently policyholders benefit due to the fund's ability to access less liquid instruments that provide a higher yield.

**Path towards compliance:**

A separate money market unit trust portfolio will be created, in conjunction with one of Liberty's asset managers, which is compliant and can cater for the liquidity requirements and return objectives. This money market unit trust portfolio needs to be registered with the Collective Investment Schemes Department of the FSB. Once approved, policyholders will be moved to this portfolio where required to ensure compliance with regulation 28. The larger the size of assets in the money market fund, the easier it is to manage the return objectives and liquidity requirements.

Time will be required to complete this process. Extension to comply with the regulation is respectfully sought to the 1<sup>st</sup> of June 2012.

3. **Compliance with the over-arching limits of sub-regulation 28(3)(f) - (h):**

**Issue:** Liberty currently offers hedge fund of fund investment portfolios. This comprises a 5% allocation of Liberty's offshore funds and equates to a 0.75% exposure on the total portfolios in respect of Liberty policyholders.

These are therefore less than the 2.5% "other asset" restriction imposed by the regulation, but being hedge funds, must comply with the registration requirements. It should be noted that these investments comply with the admissibility requirements set out in the LTI Act.

Policyholders may have selected the fund of hedge fund manager directly in excess of the limits, however, the categorisation as a hedge fund needs to be complied with.

**Path towards compliance:**

The appropriate registration process is being commenced by the hedge fund managers to ensure compliance but this will take time.

Extension to comply with the regulation is respectfully sought to the 1<sup>st</sup> of June 2012.

4. **Any direct or indirect exposure to a foreign asset must be disclosed as a foreign asset – sub-regulation 28(4)(d)**

**Offshore limits – discrepancies between the provisions of the LTI Act and the Act**

The LTI Act limit in respect of offshore assets is currently 15%. This was not increased to 25% when the South African Reserve Bank increased the limit applicable in respect of retirement funds.

The trustees and Liberty are therefore dependent on the regulators to equalise the legislation.

- 5. Exclusions regarding investments in collective investment schemes, linked policies, long-term policies with guarantees or partial guarantees and assets issued by an FSB regulated entity, where the auditors must confirm the accuracy of the certificates issued in each instance – in terms of sub-regulation 28(8)(a)**

**Issue:** The engagement with the auditors has not been concluded.

**Path towards compliance:**

The appropriate engagement with the auditors and finalisation of their requirements will take time.

Extension to comply with the regulation is respectfully sought to the 1<sup>st</sup> of September 2012.

- 6. Exclusions regarding long-term policies which guarantee or partially guarantee policy benefits -**

**Issue:** Liberty is uncertain whether the guarantees offered on some of its portfolios are such that they will satisfy the requirements which are still to be issued by the Registrar of Long-term Insurance, and thus qualify policies with these guarantees as exclusions to fall outside of regulation 28.

The Trustees and Liberty do not have any information from the Registrar of Long-term Insurance regarding the guidance, as this has not yet been issued. Liberty is thus uncertain of the compliance of its guarantees provided in respect of some of the fund member policies.

In the interim, Liberty obtained an external legal opinion regarding the guarantees offered on some of its portfolios. Until such time as the Registrar of Long-term Insurance has issued the guidelines, and considering that Liberty's insurance business is written on a non-linked basis, Liberty is of the view that its policies with such guarantees are exempt from regulation 28.

The uncertainty regarding the requirements of the guarantees affects the scope and extent of the changes required to Liberty's systems, as well as the asset management of Liberty's investment portfolios. This will ultimately impact on the finalisation of Liberty's implementation plans for compliance with regulation 28.

It is as a result of this uncertainty that an extension of time until the 1<sup>st</sup> of September 2012 is respectfully requested.

- 7. We also respectfully point out that we still await the guidance notes to be issued in respect of derivatives, private equity funds, hedge funds and securities lending. Until these notes have been issued, there will be certain issues where there is uncertainty in respect of compliance.**

The uncertainty regarding the requirements of the above-mentioned notes affects Liberty's long term asset management plans which may need to be changed to be in line with any regulatory requirements in the notes. Any change to current practices is not anticipated to be significant.

- 8. The following projects in respect of changes and enhancements to Liberty's systems and administrative processes and capabilities are underway or planned:**

- a. Liberty has identified all compliant and non-compliant investment portfolios.
- b. A review of the investment composition and asset limits of the investment portfolios is underway to establish compliance with regulation 28.
- c. Liberty is reviewing the extent of fund level compliance with regulation 28.
- d. Liberty is undertaking systems developments and enhancements to monitor member level compliance
- e. Where it is identified that a fund does not comply at fund level, this information will be communicated to the Trustees or participating employers, as the case may be, and their financial advisers and they will be consulted with. By its nature this communication and consultation will take time.
- f. Adequate time will be required for the trustees and their financial advisers to rectify non-compliance.
- g. Where it is identified that a fund member does not comply at fund member level, this information will be communicated to the trustees or participating employers, as the case may be, the fund members and their financial advisers and they will be consulted with. By its nature this communication and consultation will take time.

- h. Adequate time will be required for fund members and their financial advisers to rectify non-compliance.
- i. Liberty will develop administrative processes, which feed into the Liberty systems to enable compliance with regulation 28, so as to ensure that non-compliant investment portfolios become compliant in the future. These developments will impact on the servicing of the fund policies and will involve the training of Liberty staff and communication with financial advisers.
- j. Once the FSB has finalised the reporting requirements for purposes of regulation 28, systems development will be required to enable such reporting.
- k. As part of the development and enhancement of systems, policy documents will need to be amended and standard fund correspondence and other documentation will need to be amended.

### **Conclusion**

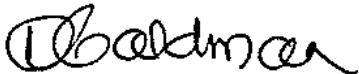
The Trustees and Liberty remain committed to comply with the spirit of the amended regulation 28, as well as to ensure that compliance takes place as soon as possible.

Time will however be required in order for the various processes and systems to be amended so that compliance can be achieved.

Please do not hesitate to contact us should you wish to engage us further in relation to any or all of the above issues.

We look forward to hearing from you. .

Yours faithfully



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