The Alexander Forbes "Bulked Accounts" Affair

Conclusion of the "Bulking Settlement Process"

Past members of the University of KwaZulu-Natal Retirement Fund, on Thursday 24th July 2008, became the first past members in the more than 1700 funds administrated by Alexander Forbes to have been paid their "bulking settlement amounts". This completed the "settlement process" which was begun more than two years ago, in June 2006. Present members of the Fund had already been compensated in November 2008 when an additional dividend was added to their Fund Credits.

The Trustees of the Fund have always insisted on obtaining the highest possible standards of service from Alexander Forbes, and, again, this has been achieved, as demonstrated by the unparalleled distinction of being "first in line" of all their administrated funds!

Background

On 18 March 2006, a sensational article entitled "Alexander Forbes plundered pension funds" appeared on the front page of "Personal Finance", a weekly journal produced by the Independent Newspapers chain. Financial journalist Bruce Cameron claimed that the major retirement fund administrator and financial services company, Alexander Forbes, had skimmed off millions of Rands in "secret profits" at the expense of funds and, ultimately, members' benefits. He claimed that Alexander Forbes had become the subject of major investigations into the "not lawful" plundering of retirement fund savings. The allegations had arisen from the arrests of Peter Martin, a former actuary, and Neil van Hees, the former marketing director of an asset management company associated with Alexander Forbes. They had appeared in leg irons in the Johannesburg Commercial Court following a four-year investigation into pension fund fraud totaling R213 million and it was alleged that both had been employed by Alexander Forbes at the time the alleged offences took place in the 1990s. He also claimed that "a six-month-long investigation by Personal Finance had confirmed that Alexander Forbes had been 'not lawfully' making 'secret profits' from about 950 retirement funds (with millions of members) that it administered on behalf of many companies in South Africa". Alexander Forbes had been "attempting to keep the scandal of the 'not lawful' profits out of the public eye and away from the scrutiny of retirement fund trustees by reaching secret settlements, involving tens of millions of Rands, with retirement funds that uncovered the 'not lawful' activities".

As a result of the public outcry and representations made by Alexander Forbes, "Personal Finance", in its following edition on 25 March 2006, published a further article on page 3 of their journal entitled "Truth that hurts can also herald healing", which considerably modified (and mollified) their initial accusations. In this article, also written by Bruce Cameron, under the sub-heading "the Facts of the Matter", he made the following points:

- Alexander Forbes had received fees or compensation from banks for "bulking" (or lumping together) the bank accounts of their clients (including, eventually, more than 1700 retirement funds);
- Their clients were not informed of this, so there had been the possibility that unjustified profits (i.e. amounts well in excess of what would be a fair fee for their services) would be appropriated by Alexander Forbes;

- A well-established legal provision in trust law, that agents dealing with their clients' property had to account for profits made by using this property, had, therefore, been ignored;
- A delay in the payment of monies, held by Alexander Forbes on behalf of a certain client, to an asset manager, had led to queries regarding the interest accrued while the monies had been held by Alexander Forbes, presumably in a bulked account and - eventually - an additional settlement amount had been paid by Alexander Forbes to the client, presumably in compensation for additional interest earned but not paid to the client;
- Several other clients of Alexander Forbes had then also reached similar settlements with Alexander Forbes;
- After Alexander Forbes had taken legal advice on how best to administrate the "bulked accounts", it had instituted new service agreements with its clients, which included disclosure of the nature of bulking arrangements and had undertaken to account for any payments received in connection with these arrangements;
- After September 2004, Alexander Forbes had received no compensation from banks for its bulking arrangements;

Intervention by the Financial Services Board and Proposal by Alexander Forbes

At time of the writing of these articles, Alexander Forbes had made no offers to compensate funds by repaying to them any "unjustified profits" made from their money through the "bulking arrangements". Shortly after this, however, the (statutory) Financial Services Board (FSB) made inquiries into the matter, and as a result of discussions between this Board and Alexander Forbes, it was agreed that independent auditors be appointed to investigate. They would perform a forensic audit on the running of the bulked accounts to determine whether unjustifiable profits had been made by Alexander Forbes from their clients' money and, if so, what compensation should be payable to each affected client.

As a result of this investigation, and the subsequent deliberations, Alexander Forbes had proposed that affected retirement funds be placed in the position they would have been in, had the full corporate cash management rate of interest been paid on their current account balances over the period in question. In doing this calculation, allowance would be made for the additional interest that would have been earned, as well as for retirement fund taxes that would have been incurred by the funds. To compensate the more than 1700 funds affected and to make amends for its questionable behavior in concealing the bulking fees, Alexander Forbes set aside an amount of approximately R385 million, which included a R12 million voluntary contribution to the FSB's Consumer Education Fund.

Position of the University of KwaZulu-Natal Retirement Fund

The situation described above, although it might have applied to the majority of the more than 1700 funds administrated by Alexander Forbes, did not apply to the University of KwaZulu-Natal Retirement Fund. The Trustees of the Fund had always insisted on full knowledge of how the Fund's bank accounts and investments had been run. Accordingly, no monies belonging to members, or past members of the Fund, or interest earned thereon had been lost to the Fund, or illicitly removed from members, by Alexander Forbes. The Trustees of the University of KwaZulu-Natal Retirement Fund had always insisted, and always would insist, that all monies legally owed to the Fund were paid to it. When costs or losses were incurred as a result of the wrongdoings of others, all such amounts would be recovered.

During 1996, the Fund had agreed to Alexander Forbes' bulking (or combining) its cash assets with those of other funds. This was to attract higher interest rates. It was further agreed that Alexander Forbes would charge the Fund nothing for this service, but would receive fees from the banks where these (bulked) investments were made. These arrangements were perfectly transparent and legal, and were made for the net benefit of members. There was no doubt that the Fund earned higher interest rates than would have been the case without this agreement.

The complaint finally leveled against Alexander Forbes by Bruce Cameron in his articles in 'Personal Finance', was that Alexander Forbes had made 'secret profits' from its clients' bulked funds *by not informing clients of this practice*. This was *not* the case with the Fund, as Alexander Forbes *did* inform the Fund as detailed above. The Fund, thus, could have no legal claim against Alexander Forbes.

Alexander Forbes reached an agreement with the Financial Services Board to make *ex gratia* payments to funds that had been under its administration during the period when fees were appropriated. According to this agreement, a 'standard calculation', in accordance with the principles previously stated, would be performed and in terms of which Alexander Forbes would make settlement offers to the funds it administrated. These offers would be *ex gratia*, without admitting any legal liability, and in full and final settlement of any possible claims the funds might make against Alexander Forbes in this matter.

Offer to the Fund and Distribution of the Proceeds

Offers made by Alexander Forbes were conveyed to all its clients. After receipt and due consideration of an offer amounting to approximately R1.9 million, the Trustees decided that while the Fund might not have suffered wrongdoing at the hands of Alexander Forbes, the Fund was not precluded from accepting the offer made, *ex gratia*, by Alexander Forbes. The Trustees thus concluded that the offer made to the Fund should not be refused.

Furthermore, the Trustees determined that the offer should be equitably split and distributed amongst both its present and its past members. If the decision had been to distribute the offer amongst current members only, the entire offer could have been paid into the Fund immediately, and distributed by adding an extra dividend to the Fund Credits of members in the normal way. The requirement by the Trustees that the offer be distributed both to present and past members, however, meant that a calculation of the proportion due to current members had to be performed before this could be done.

The detailed calculation, necessary for the distribution to be possible, was completed by Alexander Forbes only by the end of September 2007. The Trustees then directed that the amount allocated to current members be distributed immediately, and this was done by declaring an additional dividend in November 2007. The balance, allocated to past members could be distributed only after Alexander Forbes had obtained the banking details of past members so as to be able to effect the necessary transfers. When, in June 2008, it became clear that this was taking an inordinate length of time for Alexander Forbes to complete, the Trustees directed that the allocated amounts should be paid immediately to all those past members for whom the banking details were known. The Fund was informed on Thursday 24 July 2008, that this had been done.