



**Attorneys
Fidelity Fund**
South Africa

Your Champion in the Legal Profession Since 1941

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Your Ref

Our Ref

12 February 2013

Dear Mr Ramaans

LEGAL PRACTICE Bill – ATTORNEYS FIDELITY FUND SUBMISSION

I have been instructed by the Board of Control of the Fund to submit this document for consideration by the Portfolio Committee of Justice.

The submission will be expounded upon further through oral presentation to the Committee and as such I have been requested to ask if the Committee will not hear the Fund on the 19th or 20th of February at its convenience.

Please let us know as soon as is possible in order for travel arrangements to be made for the Fund Representatives.

Yours faithfully


M. B. MOLEFE

CHIEF EXECUTIVE OFFICER

B M Molefe (Chief Executive Officer), A M Stansfield (Finance Executive), J M Losper (Claims Executive), J de Beer (Forensic Executive)
P Z Ndima (Senior Claims Manager), R Burawundi (Investment Manager), S D Maile (Board Secretary)



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SUBMISSIONS BY THE ATTORNEYS FIDELITY FUND BOARD OF CONTROL ON THE LEGAL PRACTICE BILL

EXECUTIVE SUMMARY:

This document seeks to set out proposals and views of the Board of Control (the Board) in relation to the structure and content of the governance of the Attorneys Fidelity Fund (the Fund) as well as the powers vested in the Board in order to execute its fiduciary duties.

In the same breath, it also seeks to make a broader contribution to the debate around the finding of balance between the legal profession and the objectives of the Fund which is primarily to protect members of the public against pecuniary and or property losses suffered as a result of theft committed by attorneys. It also seeks to make proposals that would enhance the co-operative relationship between the regulatory arm of the profession as well as the Fund's Board of Control, whilst also eliminating any and all perceived conflicts of interest as a result of how the Board of trustees is constituted.

This debate on conflict of interest cannot take place without one bearing in mind the provisions of Section 65 of the Legal Practice Bill (LPB), which disqualifies any member of the Legal Practice Council (the Council) or any of its committees from being a member of the Board of the Fund.

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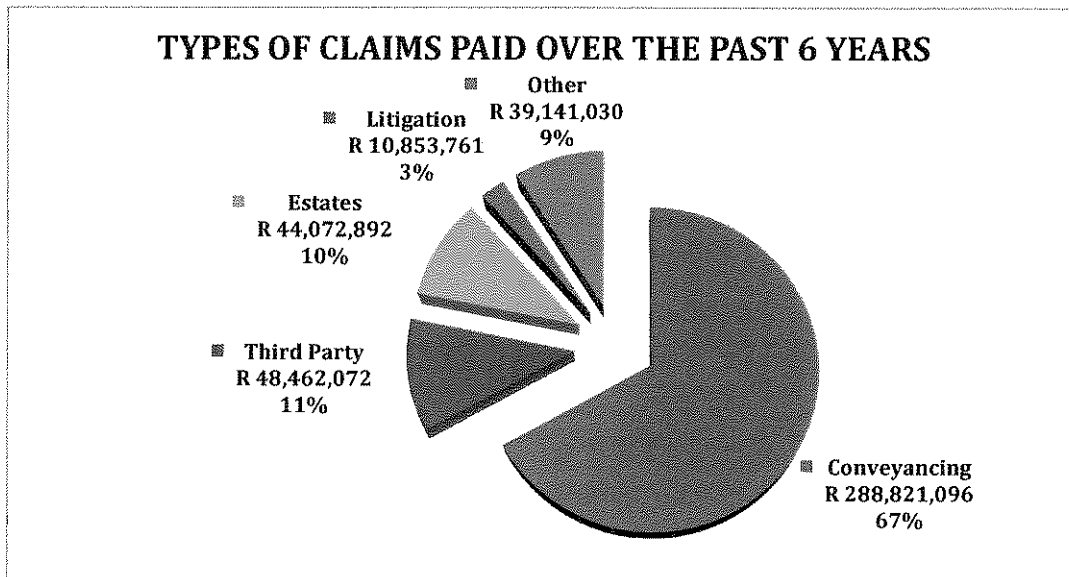
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POWERS AND FUNCTIONS OF THE BOARD

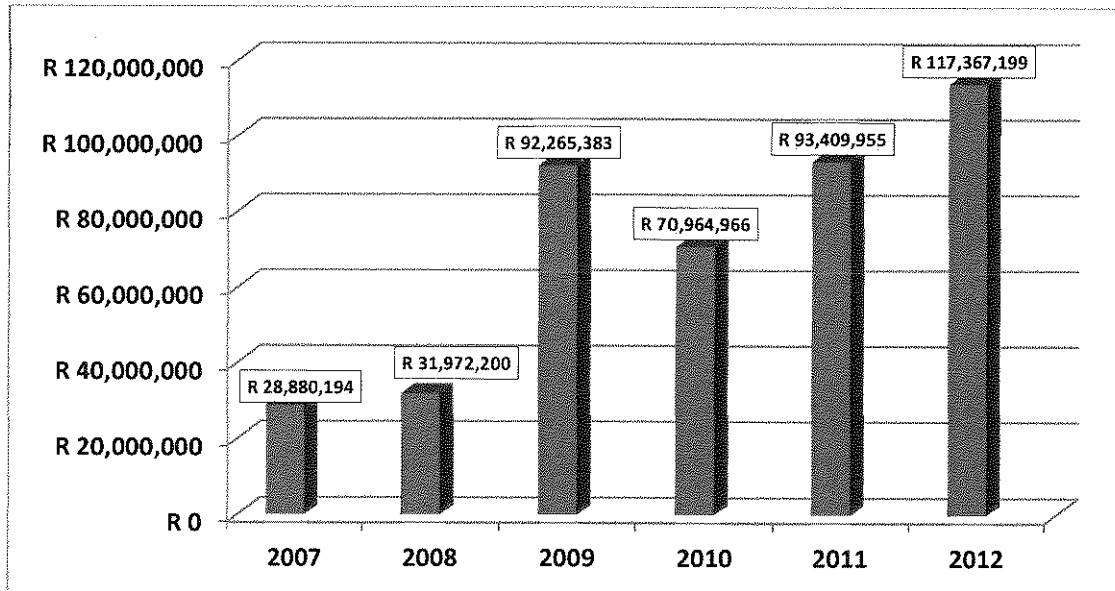
Section 64(1)(e) of the LPB makes provision for the Fund to inspect or cause to be inspected the accounts of any attorney as determined in the rules. It does not however provide for the Fund to be involved in the determination of the rules applicable to such inspections leaving it solely in the arena of the Council. This subject on its own cannot be discussed properly without providing proper background about why the Fund must and should be involved in the determination of the rules relating to accounting or at the very least be provided with an avenue of appeal to a third and neutral party on the question of its proposals on what would be appropriate accounting rules that adequately address its risk. It is against this background that the following graphs are attached to give the reader a view of the claims history against the Fund as well as the regulatory payments made for purposes of risk aversion to the organised profession.

TYPES OF CLAIMS PAID OVER THE PAST SIX YEARS

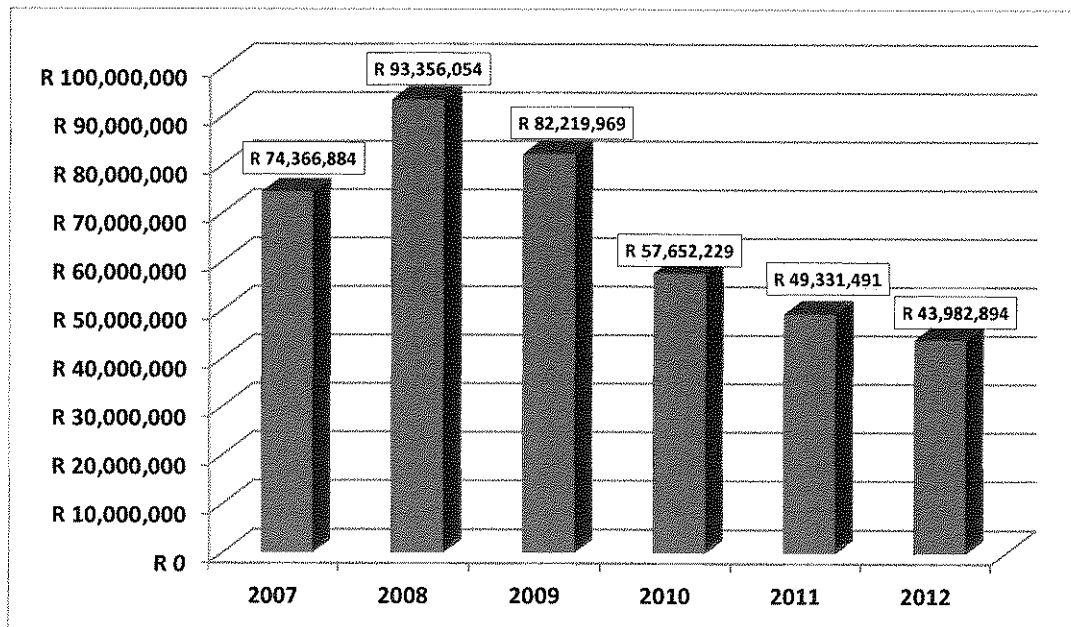




CLAIMS PAID OVER THE PAST 6 YEARS

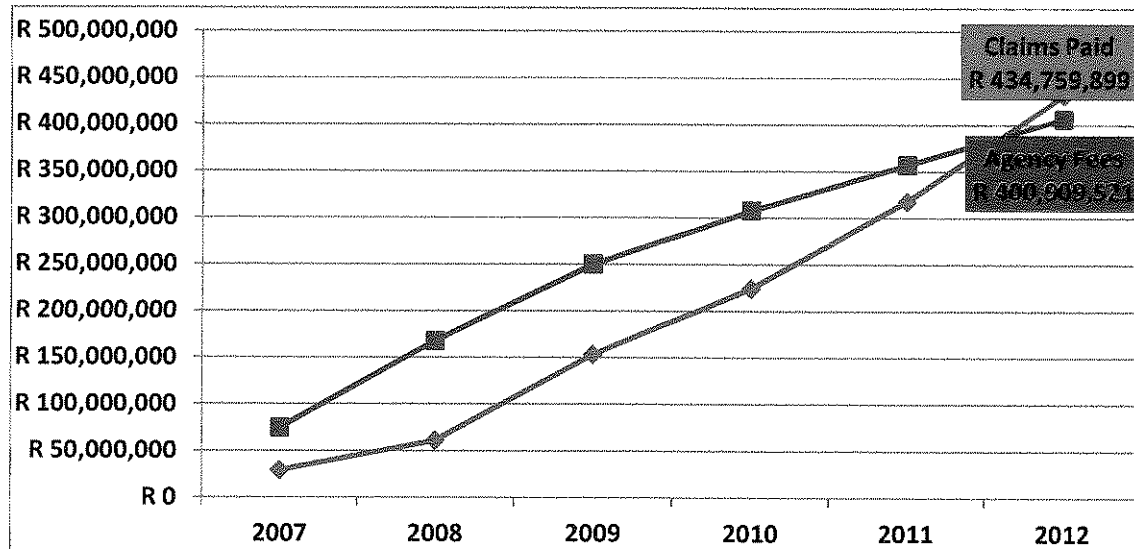


AGENCY FEES PAID OVER THE PAST 6 YEARS





**CUMULATIVE CLAIMS PAID AND CUMULATIVE AGENCY FEES PAID FROM
OVER THE PAST 6 YEARS**



A comparison of same will show simply just how the ratios between the two are closely related, which calls for a new approach to risk aversion measures including the Fund being empowered directly and without recourse to the Council, but in co-operation with it to inspect the books of account of attorneys not so much as a regulatory function but rather to ensure the integrity of compliance and truthfulness, and to assess extent of its risk exposure as captured in trust accounts. **The Fund is the Risk taker in this instance and has an embedded interest in ensuring the integrity of trust account information to which it currently has no sight at all except when hit with a claim.** In as much as current legislation empowered the Societies with the capacity to involve the Fund in inspections there has been a distinct refusal to do this preference being given to third parties whose accounts would in any event still be expected to be settled by the Fund as a matter of course and not discretion by way of a situation which howls for redress.



The inclusion of these inspection powers is also necessitated by the current regulatory regime which has to a large extent been more reactive than proactive, and has not addressed within the rules the need of undertaking regulatory inspections because it is limited by the provisions of Section 70 of the current Attorneys Act 53 of 1979 (the Act). The insertion of Section 64 (1)(e) thus addresses the shortcomings regarding proactive regulatory inspections as it were, and the Board submits that as the organisation that takes the risk it should be at the forefront of the effort to minimise theft committed by practitioners, and such infractions will be reported to the regulator, which will then take the necessary remedial steps. **It is thus not envisaged that the Fund be seen as a regulator at all and in fact whatever outcomes of such inspections are, they remain a matter for the regulator to deal with for purposes of enforcement and access to the courts first and foremost except in those instances where the regulator is both negligent and tardy thus exposing the Fund to further risk remains with the regulator.**

Section 95(zE) of the LPB empowers the Council to make rules relating to the inspection of the accounts of an attorney. Section 64(f)(iii) of the LPB empowers the Board of the Fund to make rules regarding any other matter concerning the Fund. Potentially the Board as well as the Council might make conflicting rules regarding the inspection of books of account of attorneys. It is therefore imperative that the Council in exercising its powers in terms of Section 95(1)(zE) does so in consultation with the Board of the Fund and as such the Section needs to reflect this. In the same manner, the Section requires the Council to make rules relating to applications for a Fidelity Fund Certificate (Section 95t), the form of the Fidelity Fund Certificate issued by the Council (Section 95u) and the contribution to be paid to the Council when



applying for a Fidelity Fund Certificate (Section 95v). All these matters affect the Fund and in particular it becomes necessary that the Fund be consulted in the determination of such rules as they cannot be made in isolation from its views.

Section 94(1) of the LPB provides for the minister to consult with the Council on a number of matters when making regulations. Amongst these matters are paragraphs E of this Section, which relates to government bonds and other securities into which the Board can invest surplus funds. Nowhere is the Board consulted, yet the Council would most likely not even have a clue of the Board's investment strategy as it were. In paragraph F the minister consults the Council on matters which must be included in the annual report of the Board. These two matters go to the core of governance in any institution, and it is simply incomprehensible that the minister would not consult the Board on matters that affect it but rather the Council, which to all intents and purposes should have an arm's length relationship with the Board.

It is submitted that the current position in which the minister consults the Board, and the Chief Justice is involved in the approval of investment regulations by the Board provides sufficient oversight in that Section 94(1E) and (F) should refer only to the Board and not the Council as after all the Council could never be in any other position tomorrow that any of the Societies are today and may reinforce the question of conflict of interest as alluded to above.

Section 49(1) f of the LPB states the following:



“In addition to the other powers and functions conferred on or assigned to him or her in this Act and for the purposes of achieving the object referred to in Section 47, the OMBUD;

(f) May review a decision of the Board in respect of the rejection, in whole or in part, of a claim arising out of the theft of trust money,

This is very limited in that the OMBUD cannot for instance entertain any other complaint relating to the decision of the Board of Trustees and one of the gravest threats to the continued sustainability of the Fund is the subsidisation of the Council .Unless the section relating to the annual apportionment is amended to make it clear and totally unequivocal that the Fund has first preference to the assets at its disposal there will always be bickering about such appropriation. In this respect annexure “A” is attached hereto which serves to outline the Funds sustainability outlook long-term, hence the need to ensure that a curb be placed on the appointment to the Council.

2.0 CAPPING & EXCLUSION OF CERTAIN TYPES OF CLAIMS

The LPB does not make provision for the capping of claims.

The Fund’s liability is currently open-ended standing currently on a contingency of around R374 million.

An actuarial report attached hereto marked “B” commissioned by the Fund after analyzing data of historic claims against the Fund, has recommended that it would be appropriate to cap claims at a level of 5



million rand per claim. 99.9% of claims paid by the Fund over the past few years would have been unaffected by such a cap and as such a statutory capping of 5 million rand per claim is recommended in order to protect the sustainability of the Fund going forward the event of a disaster sized claim and or series of claims hitting the Fund. It is further submitted that the Minister be empowered through regulations to review the capping limits going forward on the recommendation of the Board of the Fund based on an actuarial report which assess the sustainability of the Fund. In short the Fund seeks an enabling section within the LPB which will make this possible. It would not in any event be an innovation within the profession with this being standard in most jurisdictions to avoid the collapse of Fidelity Funds resulting in non-protection for the public against malfeasance by practitioners.

It is also noteworthy that the LPB does not address professional indemnity cover matters, as well as professional indemnity and fidelity cover in respect of local practitioners engaged in mergers and or twinning and or associations with firms of practitioners outside the Republic of South Africa. It is submitted that the concomitant risk associated with this practice calls for an enabling section in the LPB that would call for disclosure to both the council and the Fund of both professional indemnity as well as fidelity cover which will protect the local public as well as avert any threats to the continued existence of the Fund that might be brought about by the power of fallen currency against local currency.



3.0 POWERS AND FUCTIONS OF THE COUNCIL

Chapter 2

Powers and functions of the Council

Section 6 (1) (p)

The Council must do that which is necessary or expedient to achieve its objectives referred to in section 5, and may, having due regard to the Constitution, applicable legislation and the inputs of the Ombud and Parliament – consider and grant bursaries and loans to students, candidate legal practitioners and legal practitioners for the purpose of legal education and research

The Fund already has an established bursary process and infrastructure in place. It is submitted that this function remain with the Fund. Insofar as legal education and the funding thereof is concerned there is already a process via which such is funded in co-operation with the current existing societies and it is submitted that same can be left unchanged and it would make the funding model less cumbersome and onerous on both the Fund and the Societies and Council.

POWERS AND FUNCTIONS OF THE COUNCIL

Chapter 2

Powers and functions of the Council



Section 6(4)(b)

The Council must, in the rules, with regard to fees and charges which are payable to the Council, determine – annual fees, or portion thereof, in respect of a part of a year, payable to the Council by attorneys for Fidelity Fund Certificates.

This impacts on the Fund and must and should be agreed with the Board. In the current framework the fee for newly admitted practitioners has stood on R50 and has not been changed for many years.

The Fund basically is hamstrung by this as the current contribution is in fact less than the cost of the administration involved in the issue of such certificate hence the need to involve the Fund in the determination of a realistic contribution to ensure it is regularly reviewed.

5.0 AUTHORITY TO RENDER LEGAL SERVICES

Section 33 (4) (b)

- Struck-off persons: their presence in Legal Practices poses a risk to the Fund if the reasons for striking off relate to dishonesty, theft and fraud. Oversight and supervision of staff is an area particularly lacking in some practices which has cost the Fund dearly in the past and as such if the subsection remains it must impose clear obligations on the partners related to such as well as reporting to the Council on a regular basis regarding such person's rehabilitation into the profession.



- There is a reputational risk associated with the employment of such a person which far outweighs any benefits that might accrue to such practice through such employment.
- It also opens the door for scapegoating with one partner taking the fall for others and remaining employable within the profession.
- Fund's submission is that this sub-section be removed completely or qualified as alluded to above.

1.1 section 57(1)(a): limitation of liability of the Fund

1.1.1 Section 57(1)(a) excludes from liability by the Fund a claim from *a family member or a member of the household* of an attorney found guilty of theft. The corresponding section in the Attorneys Act provides that the *wife* of a practitioner may not claim compensation for theft committed by that practitioner (presumably "wife" should read "spouse").

1.1.2 The terms "family member" and "members of the household" are not defined and are vague. We recommend that these expressions be defined as otherwise this is likely to give rise to litigation.

1.1.3 The reference to the attorneys' having to have been found guilty of theft if the Fund is to avoid liability should be deleted. If trust funds have been stolen the family member should not be



entitled to claim against the Fund, whether or not the attorney concerned has been found guilty of theft by a court. In many instances attorneys are not prosecuted for various reasons, or are no longer alive, and family members should not be entitled to benefit thereby.

1.2 section 57(1)(e): theft of money held for investment

1.2.1 Attorneys hold two categories of moneys for investment purposes. The first category relates to funds held on a temporary basis as part of a transaction (for example, a deposit on a property which is invested pending transfer of the property). The second category concerns funds held purely for investment purposes to earn a return for the investor.

1.2.2 The Attorneys Act currently excludes liability of the Fund for the theft of money placed with an attorney purely for investment purposes, that is, the second category described in paragraph 8.35.1. The reason for this is that the experience of the Fund over many years has been that claims against the Fund arising from the theft of money placed with an attorney purely for investment have been very large and have threatened the existence of the Fund. This has also been the experience in



overseas jurisdictions. If monies so invested with an attorney are protected against theft that would place the investor in a better position than he or she would be if the money were invested through normal channels, where there would be no similar protection.

1.2.3 Section 57(1)(e) excludes the Fund from liability as a result of theft of money which an attorney has been instructed to invest on behalf of a person contemplated in section 57(1)(d). That section in turn refers to a person who has received notice in writing from the Council or the board of control of the Fund warning against the use or continued use of the legal services of the practice concerned. Although there is a similar provision in the Attorneys Act, this is in reality no protection for the Fund at all because the warning is likely to come only after the Council or the board of control have determined that there has been an irregularity in the practice of the attorney concerned.

1.2.4 The Board is of the view that the exclusion of liability in section 57(1)(e) should not be restricted in the manner set out in the section, but that the Fund should not be liable for the theft of any money placed with an attorney purely for investment purposes. The provisions of section 47(1)(g) of the Attorneys Act, should accordingly be reinstated in the Bill.



8.0 PURPOSE AND APPLICATION OF THE FUND

Chapter 6

Purpose and application of the Fund

Section 58 (l)

Subject to the provisions of this Act, the Fund must be utilised for the following purposes: Section 58(1)(j) making an annual appropriation to the Council in terms of Section 22(1)(b). This annual appropriation is not capped nor defined in any form. It may or may not include expenses for regional councils to be set up in terms of Section 23(1).

Unless sub-section 58(1)(j) is qualified to ensure that the Fund has first preference in respect of available resources, it opens up the door for demands by the Council that it may not be able to meet. Included in this would be the payment of fees and disbursements associated with the regional councils. This probably is the biggest if not the biggest threat to the sustainability of the Fund, bearing in mind the current scenario in which the agency fees paid to the Law Societies, at least up until the end of 2012 outstripped the cumulative claims settled by the Fund. The reader is referred to the graphs above comparing the agency fees against the claims lodged. One has to factor in the reimbursement of costs that are associated with strike off costs, trust account investigations and curatorship as envisaged in Section 45 (j) of the current Attorneys Act. Also to be taken into consideration and more relevant are the costs that are associated with the reimbursements of banking account costs as envisaged in Section 58(i) of the LPB. One then begins to see that a lot of the Fund's resources are consumed more by regulatory and professional activities



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rather than its core functions. **It is in the light thereof that the apportionment and payments referred to in Section 58(j) and (i) that are made by the Fund be subject to the availability of the resources to carry out its core functions, taking into account its long-term sustainability and that they be at the discretion of the Fund as is in the current legislation.**

The reader hereof is referred the attached actuarial report for ease of reference in order to understand the reasoning behind the need for the fund to have its resources directed primarily at addressing its core functions, and supporting the regulatory framework as a secondary function.

The contribution to bank charges should be limited to Section 86 (2) and (3) trust accounts only. Section 86 (4) account bank charges should only be treated the same way if the Fund receives a portion of the interest generated from the investment concerned. In essence Section 86(4) should be amended to ensure that the Fund receives a portion of the interest that the client has elected to receive from his investment otherwise the Fund carries exposure in respect of which it receives no benefit at all.

This matter really talks to the win- win scenario that is set up by the existence of the Fund.

Section 58 (o)

Subject to the provisions of this Act, the Fund must be utilised for the following purposes: paying the costs or a portion of the costs incurred by an attorney in relation to the obtaining of a Fidelity Fund Certificate



- The extent of the costs should be defined and limited to the audit/inspection costs on the trust account practice
- The Fund should also in this instance retain the discretion to make such a contribution depending on the availability of sufficient resources to meet its core obligations as in the current dispensation.

9.0 COMPOSITION OF BOARD

Chapter 6

Section 63 (1)

The Board consists of the following persons:(a) Five legal practitioners nominated by the Council;

(b) two persons, nominated by the Council, who, by virtue of their qualifications, expertise and experience in the field of finance, are designated by the Independent Regulatory Board of Auditors or its successor; and

(c) two fit and proper persons nominated by the Minister.

- The representation at Board level is in favour of the nominations by the Council.
- The objective of protecting the public cannot be addressed effectively, considering that a majority decision stands (Section 70 (4))



- The Council can nominate the attorney component but it has to be a transparent process wherein all members of the profession who are not linked to it in any way have an opportunity to be nominated.
- The non-attorney component should be nominated via public participation to ensure accountability to the core funders of the Fund being the public. The Board Secretary as compliance officer of the Fund could be tasked with the process of recruitment via advertisements in newspapers much the same way as in any other Boards of parastatals etc. from which pool names may be forwarded to the Minister for ratification. This is not an ouster of the profession at all as it still nominates the attorney component and will and can also participate in the appointment of the non-attorney component.
- It must be said in this regard that the last held view is not unanimous in that some members of the Board of Trustees of the Fund do not hold the view that public participation is required preferring instead for the Council to be the party that nominates but as alluded to elsewhere in this document there can be no rational reason why the public as the core funder of the Fund should be excluded from the control of its operations.

It could perhaps be desirable that in as much that there are practitioners, that as already alluded to before, they not be beholden to the Council and that their removal as trustees of the Board be determined by the Chief Justice on the recommendation of the Board which would have reviewed not only the complaint, if any, against them, but also their performance as trustees of the Fund.



Section 69(d) of the LPB reinforces the brittleness of the nomination process itself, as it empowers the body which nominated that member to recall him or her from office, which opens the door to abuse of that Section. Especially where that constituency that nominated him or her may not like decisions made by the Board and seek to manipulate the process by nominating more pliant members of the Board. Accountability to the public which is one of the cornerstones of the LPB is thus undermined by this. It is submitted that were this particular subsection to stand it be limited in the sense that such recall be done in consultation with the Board of trustees bearing in mind the performance of the trustee, attendance and discharge of his or her duties as such and whether he or she remains a member in good standing of the Council

10.0 POWERS AND FUNCTIONS OF BOARD

Chapter 6

Powers and functions of Board

Section 64 (1) (e) and (f) and Section 95 (zE)

In addition to the powers conferred upon it in this Act, and in the furtherance of the purpose of the Fund, the Board may –

- (e) as determined in the rules, inspect or cause to be inspected the accounts of any attorney;
- (f) make rules relating to -



- (i) contributions to the Fund and the issuing and costs of Fidelity Fund certificates;
 - (iii) any other matter concerning the Fund;
- Chapter 9 Section 95 determines that the Council will determine the rules, but without the involvement of the Fund – that is problematic, especially in relation to accounting rules. These have to be done in consultation with the Fund in order to give effect to the provisions of the two above-mentioned sections otherwise this would lead to possible conflicting rules.
 - Alternatively, the Fund must be able to issue its own rules as conditions to the issuing of the Fidelity Fund Certificate or jointly determine these with the Council.

11.0 CERTIFICATE IRO LIABILITIES OF FUND AND INVESTMENT OF MONEY IN FUND

Chapter 6

Certificate in respect of liabilities of Fund and investment of money in Fund

Section 72 (3)

Any amount determined in terms of subsection (2) that is not immediately required for the purposes referred to in subsection (1) in any financial year must be invested in Government and other securities as may be prescribed by regulation.



Chapter 9

Regulation and Rules

94. (1) The Minister may, and where required in the circumstances, must, after consultation with the Council make regulations relating to—

(e) Government and other securities into which the Board can invest surplus funds;

- Regulation 94 only provides for the Minister to consult with the Council, but these matters affect the Fund.

The consultation should be with the Board and not the Council as is the current scenario otherwise the Council would be in position to dictate the Board's investment strategy without a clue of the Board's business and strategic objectives since these are two separate entities

12.0 AUDIT

Chapters 6 & 9

Audit

Section 75 (3)

Within one month of receiving the audited financial statements, the Board must submit an annual report to the Council and the Minister which must at least set out and contain—

(a) the total number of persons who made claims in terms of this Act;



- (b) the total number of attorneys who paid contributions in terms of this Act;
- (c) the total number of persons who were paid claims and the monetary value of claims paid in terms of this Act; and
- (d) any other matters as may be prescribed by the Minister.

- The reports to the Council suggest control of the Board by the Council, a highly undesirable scenario save where it relates to operational matters only. It tends to undermine the independence of the Board of trustees of the Fund who might feel constrained in decision making by the ever present spectre of reports to a Council whose interests might be inimical to its own sometimes. The Section should be amended to show the arm's length relationship between the parties and the reporting necessary be limited to operational reports like claims and public documents like the Fund's annual financial statements. In any event even in the current regime reports are directed to the Minister and there is no need to change this except to suggest some form of control over public funds by the Council an oversight function which the Minister can and must exercise not a body that by its very nature if allowed to could possibly compromise the Fund's Board through unrealistic expectations of funding and when rebuffed seek other avenues to achieve this.

Chapter 9

Regulation and Rules



94. (1) The Minister may, and where required in the circumstances, must, after consultation with the Council make regulations relating to—

(f) matters which must be included in the annual report of the Board;

Chapter 9 Regulation 94 only provides for the Minister to consult with the Council, but some of these matters affect the Fund.

- The Board should also be consulted as certain regulations relate specifically to the Board over which the Council has no power. Such provisions suggest vested control yet reading the LPB in context there is no such relationship of control and one has to be wary of those that would seek to read that as the former and not the latter.

13.0 ACCOUNTING

Chapter 7

Accounting

Section 87 (4) (a)

Any money held in the trust account of a trust account practice in respect of which the identity of the owner is unknown, must, after the second annual closing of the accounting records of the trust account practice following the date upon which those funds were deposited in the trust account of the trust account practice, be paid over to the Fund by the trust account practice.



This section only provides for unknown/unidentified monies

- Consideration should also be given to adding a subsection on unclaimed monies and that same must be paid over to the Fund within a year after a firm's annual audit.

The Fund has IRBA support in this regard as monies lying in suspense accounts for too long pose a significant risk.

In conclusion these are the submissions that the Board of the Fund recommends for submission and they will be amplified upon in oral submissions and submitted to the Portfolio Committee on Justice for further debate and consideration.

POWER TO GRANT BONDS OF SECURITY

Section 6 and 77(3) of the LPB amount to a duplication of powers between the LPC and the Fund to grant Bonds of Security.

The Fund is empowered to levy premiums and fees for the provision of any insurance or security [Section 77(4)]. The LPC is not so empowered and cannot thus be able to fund same.

It is submitted that the Fund only retain the function as is currently the case.



AFF ENTITLEMENT TO INTERACT

AFF entitlement to receive trust interest is contained in sections 64(1)(g) read with section 86 of the draft LPB.

Section 86 provides that trust interest must be paid over to the AFF, but does not explicitly state that such interest vests in the AFF. The vesting issue is important as it goes to the root of the AFF entitlement to manage its income stream. It is also an issue that has come up in past discussions with the banking industry. The AFF is in regular discussions with the banks to develop specialised banking products for use by the attorneys' profession.

Section 86(5) could be expanded to explicitly provide that interest accrued in terms of sections 86(2) and 86(3) vests in the AFF, as well as an appropriate portion of the interest earned in terms of the client investment accounts opened in terms of section 86(4).

Silas Nkanunu
AFF Chairperson

Motlatsi Molefe.
Chief Executive officer on behalf of Management
10th February 2013.

Quantscape

Actuarial and Asset Consulting

To: Andrew Stansfield
 From: Cathy Fivaz
 Date: 29 October 2012
 Subject: Attorneys' Fidelity Fund - Report on sustainability of the asset base

Introduction

My brief was to examine the levels of discretionary funding that could be maintained going forward whilst safeguarding the continuance of the fund over the medium to long term.

Previous years' reports

In previous years, the Board of Control (BOC) had adopted the principle of diverting a portion of the net trust income (NTI) each year for the enhancement of professional standards in the legal profession. A brief description of the previous model is contained in appendix A for completeness.

Some of the key findings were:

1. If the NTI decreases either due to a reduction in trust balances itself or as a result of an environment of reduced interest rates, it is important to communicate this to the BOC so that undue demand is not placed on the fund to its detriment.
2. In the few years prior to 2008, the fund has had a windfall in term of trust income and investment proceeds which has supported a generous enhancement program.
3. The percentage of NTI that can be diverted to non-essential functions is highly sensitive to the future level of inflation and real growth of essential expenses. The percentage that can be diverted is critically dependent on the fund being able to manage its essential expenses. If essential expenses are not contained, then the fund's assets would be required to support the enhancement program. Whilst this is acceptable as once-off, a regular dipping into the asset base would be detrimental to the long term sustainability of the fund.

Quantscape c.c.
 Reg. 2001/041518/23

In the previous report, I recommended that:

- the percentage diverted be limited to a maximum of 30% of the net interest earnings per annum, and
- the absolute limit was not reduced from the previous year so as to allow for projects which required funding over a period of several years.

I have included a graph from the 2010 report in appendix 2. This show the sensitivity to the rate of interest assumed on trust balances, the rate of return earned on the fund's investments and the inflation of costs.

Current economic backdrop in South Africa

The South African economy has yet to recover fully from the 2008/9 crisis. The risks to economic growth remain on the downside and the weak global economy will to continue to hurt SA growth.

There is still more downside- than upside risk to interest rates. The government expects inflation to remain within 3-6% policy target in the foreseeable future, so there is heightened expectation that monetary policy will be used to try and stimulate growth. This means keeping SA interest rates as low as possible.

Low interest rates have made it very hard for funds to produce sufficient return to match projected liabilities.

In a recent report by HSBC, "The biggest issue defined benefit pensions face is their increasing underfunding, caused mainly by recent poor returns and the fall in interest rates. A study by pension consultant, Towers Watson, found that last year pension funds in 11 major economies had on average a 25% gap between assets and liabilities (compared to a 4% gap 10 years ago)".

A financial picture of the AFF

I focus on the latest expected results of the 2012 financial year and 2013 budget figures, as supplied by Andrew Stansfield.

Net trust interest and investment income

As we have seen since the financial crisis of 2008/9, the trust balances have reduced largely due to a dampened economic environment. This is clearly depicted in appendix 6. A background of lower interest rates currently prevails and is not expected to rise in the next year. Both of these have reduced the absolute amount of trust interest going forward.

Appendix 3 shows the smoothed historical returns for the equity and bond markets, the inflation rate and short term interest rates. The period of excess investment returns of the mid-2000's is over and is not expected to occur again in the foreseeable future.

Section 78(2A) interest

Andrew Stansfield motivated the financial benefit to the AFF of the receipt of a portion of Section 78(2A) interest to compensate the AFF for the risk of theft. (See discussion document dated 6 September 2012). I fully support this motivation as it will be crucial to ensuring the sustainability of the fund. However, it is imperative that the AFF ensures that all the banks are able to accommodate the inclusion of a levy to be paid to the AFF otherwise this loophole may be exploited by attorneys to the AFF's disadvantage.

Expenses

A pie chart in appendix 8 depicts the major source of expenses. Trust account and Law Society Agency fees comprise more than a quarter of the total expenses. These are directly related to the gross trust interest and these reduce as trust interest falls. To a large extent, the factors influencing the income (and hence the related expenses items) are outside the control of the AFF management, so can be regarded as a given.

Theft claims, Professional Indemnity premiums and section 46(b) expenses constitute almost 60% of total expenses.

As shown in appendix 5, theft claims have risen exponentially over the last 10 years. The increase has been dramatic since the 2008-9 financial crisis and there is no sign of abatement. The AFF expects theft claims to 'hit' the 1st limit of R150 million in 2012. The cost of the reinsurance cover is some R8 million p.a. However, if in the future, the AFF is expected to regularly claim from stop loss reinsurance cover, the consequences are likely to be that

- the cost of theft reinsurance cover will rise, all other things equal

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- the first entry point will increase (i.e. be higher than R 150 million) and the AFF will have to bear a larger share of the claims before reinsurance kicks in
- or a combination of the above.

In the last instance, the cost of reinsurance may become prohibitive.

The AFF has proactively embarked on setting up a forensic investigation team in an attempt to limit the frequency and quantum of claims. This is essential for improved claims management and the long term viability of the fund.

PI premiums currently make up some 18% of the total costs of the AFF. In discussion with Andrew, it appears to exhibit a similar pattern to the theft claims in that the PI claims (and hence premiums) have also risen dramatically over the last few years. (A graph shows the trend in PI premiums). With a projected operating loss of R213 million in 2013, I raise the question of why the AFF is paying for this cover instead of the members paying for themselves. If the members bore this cost directly, this would significantly impact the AFF bottom line. A rough calculation is that the cost of cover is R 100 million; there are some 21 000 practitioners, the cost to each member (assuming the same premium) is approximately R 4800 p.a. or R 400 p.m. for R 1.5 million of PI cover.

Non-essential expenses

I recognize the imperatives for funding non-essential expenses. However, these must be balanced with the need to sustain the fund to meet future theft claims. In 2012, the S46 (b) expenses are some R 87 million or 2.5% of the assets. One may conclude that this is approximately half of the investment return and that the fund will still continue to grow. However, the fund will not grow fast enough to keep pace with the growth in liabilities and therein lies the nub. Future clients will enjoy relatively less security because the liabilities will be less well funded. Together with the growth in the cost base, the projected operating loss of some R 213 million for 2013 will erode the asset base by about 6%. The compound effect of eroding the asset base each year is exponential and within 5 -10 years the fund may well not be sustainable in its current form and offering the clients the same level of protection.

Put in another way, if operating losses are greater than the return on investments, then the business is being funded by the erosion of the asset base. The asset base must at least keep pace with the growth in the profession and the growth in liabilities so that the relative security for each member remains constant.

The solution may lie in charging a 'professional development' levy to firms to fund S46(b) expenditure. This could be targeted so that larger practices pay relatively more as they can afford to give back more to society. This will also have the effect of improved budgeting for

non-essential expenses within the profession. Members will want to have more input and take more responsibility for this expenditure for the good of the profession.

Conclusion

At this juncture, it is nonsensical to do projections on a similar basis as was done in the past especially in view of the fact that the AFF is projecting operating losses in the near future. The fund is not sustainable in its current form without meaningful management action to stem the operating losses which are expected to take place. If the fund is in an operating loss situation which is expected to continue if there is no change in management action, it is essential that that business model needs to change sufficiently to reverse this situation. Furthermore, I believe strongly in getting what you pay for and paying for what you want. This principle encourages accountability, responsibility and thorough needs assessment. If the current operating loss is sustained in the future and the non-essential expenses continue to grow at the rate of the past few years, the AFF will survive for 5 – 10 years before it is potentially no longer viable.



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Appendix 1

Brief description of model used in previous years (2004-2010)

Obligations

The Fund's obligations can be divided into essential functions and non-essential functions.

Essential outgo from the fund consists of:

- Claims expenditure arising from theft of trust money or property;
- Claim related costs,
- Reinsurance premiums;
- Professional indemnity insurance premiums; and
- Salaries and administration costs.

"Non-essential" expenses are the expenses incurred in the enhancement of professional standards in the legal profession and comprise legal education as well as bursaries and educational grants.

Income

The fund derives income primarily from:

- Interest earned on trust account balances in terms of Section 78 (1) and 78 2(a) accrues to the AFF. NTI is net of agency fees, contributions to bank charges and audit fees.
- Investment proceeds earned on the assets of the fund (including unrealised capital gains).

Projected cash flows:

A model projected future cash flows for:

- Net trust interest earned from trust balances;
- Total investment proceeds from the fund's assets;
- Essential function outgo.

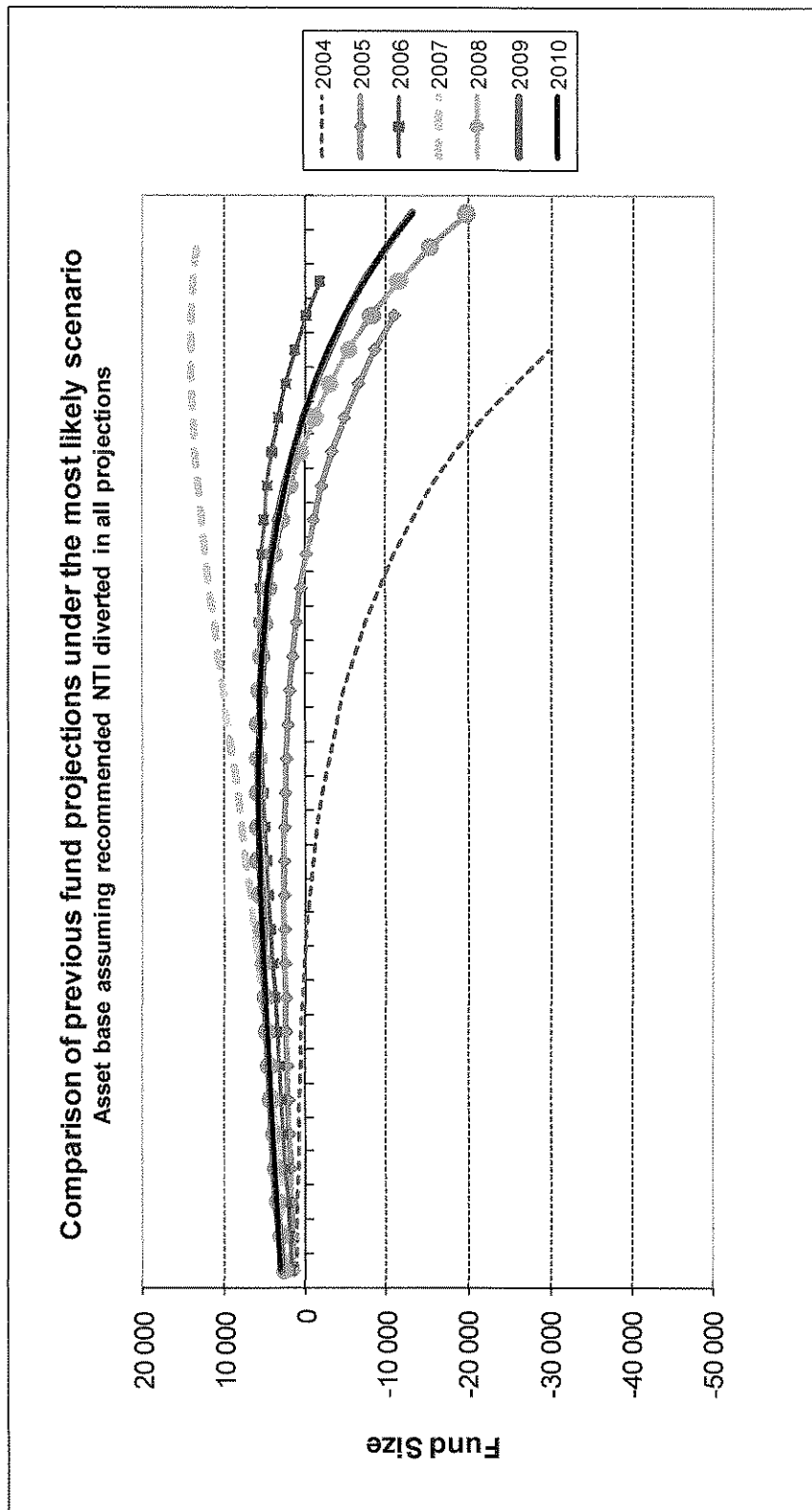
Key assumptions:

- Gross trust interest is a direct result of the assumed interest rate as well as the projected level of the trust balances. The model depends upon and is highly sensitive to the assumed level of future trust balances and the rate of return earned on these balances.
- The expected real rate of return on assets, the expected inflation rate and the real growth in costs.
- The expected growth in the number of attorneys.

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Repeat of graph shown in 2010 report.

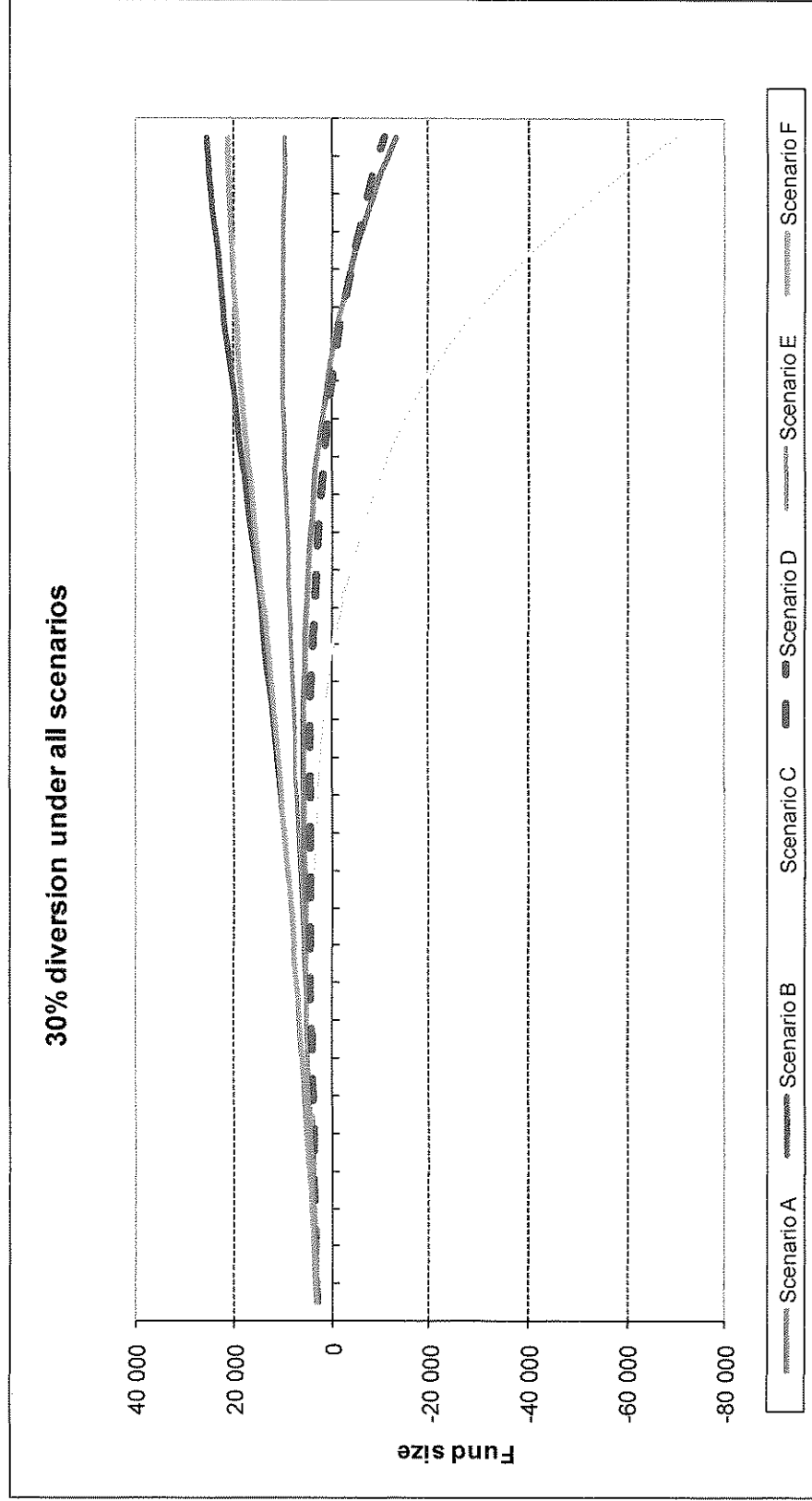
This shows the sensitivity of projections to the net trust interest earned. Trust balances experienced rapid and extraordinary growth in the later 2000's and plummeted subsequent to the 2008-9 financial crisis.



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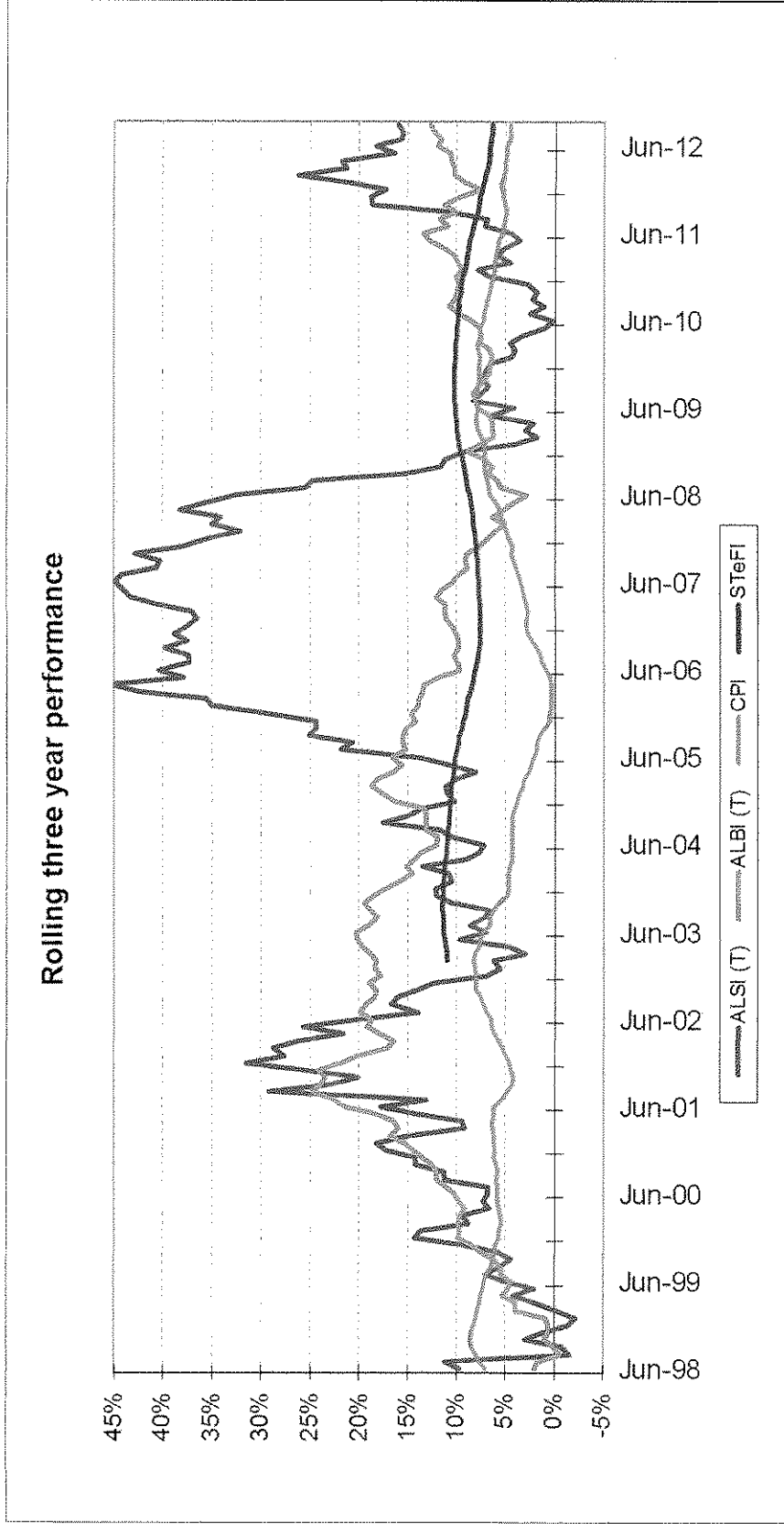
Repeat of graph in 2010 report

Scenario C highlights the negative impact of cost inflation. The inflation of the cost base has not been contained to the level in Scenario C (i.e. 5% real cost growth) and hence the fund would be expected to be depleted much more quickly than in this projection.

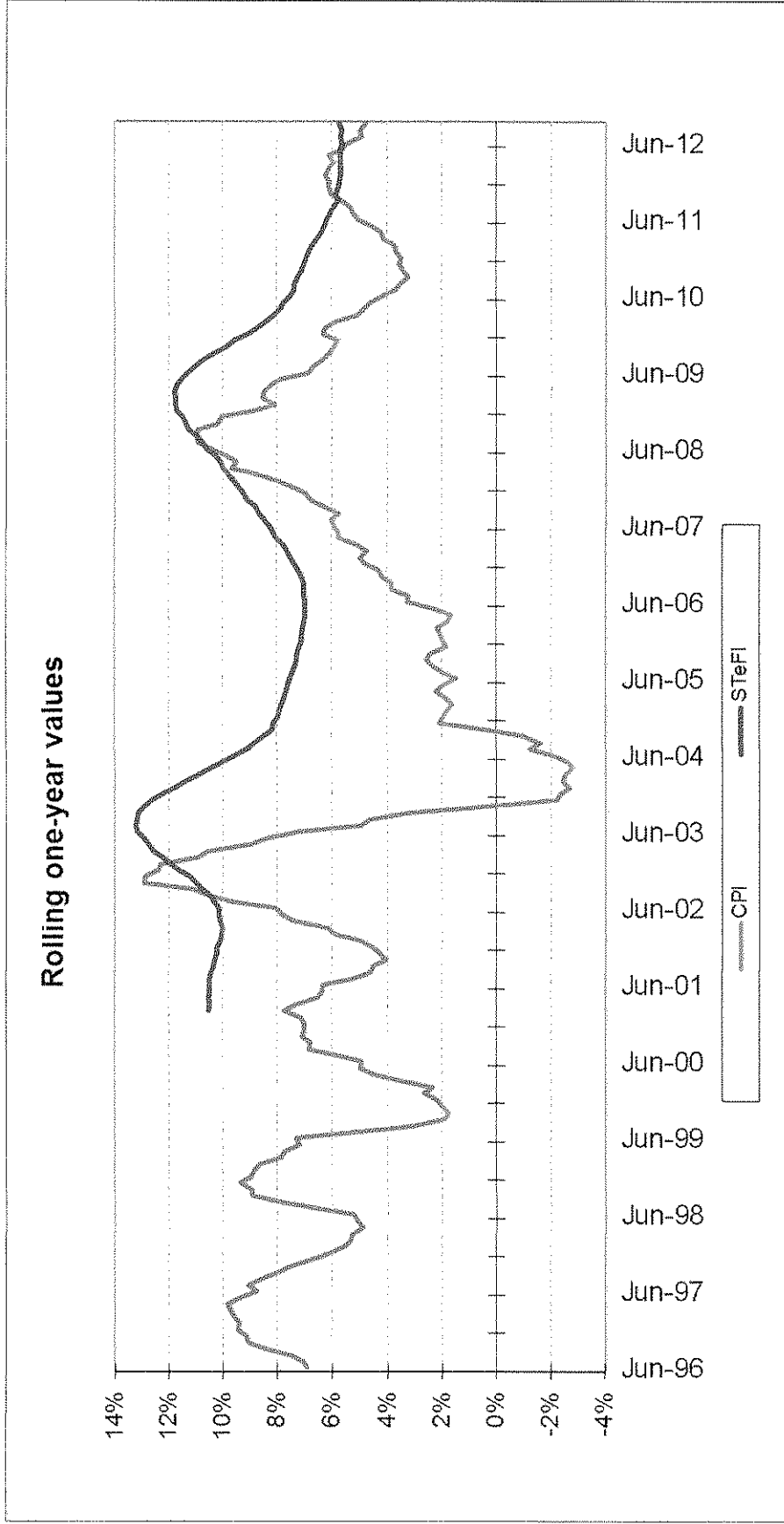


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rolling three year return is used to smooth out the volatility in the graph so that trends can be identified. The short term interest return (as shown by SteFi) has ended down from almost 11.5% to 6.5%. The short term rate of interest is expected to be about 5% until 2014 due to the political pressure to stimulate growth in SA. The gap between inflation and short term interest return has also narrowed and is expected to remain at its current 'gap'. The halcyon equity returns of the mid-2000's are unlikely to be repeated in the foreseeable future.

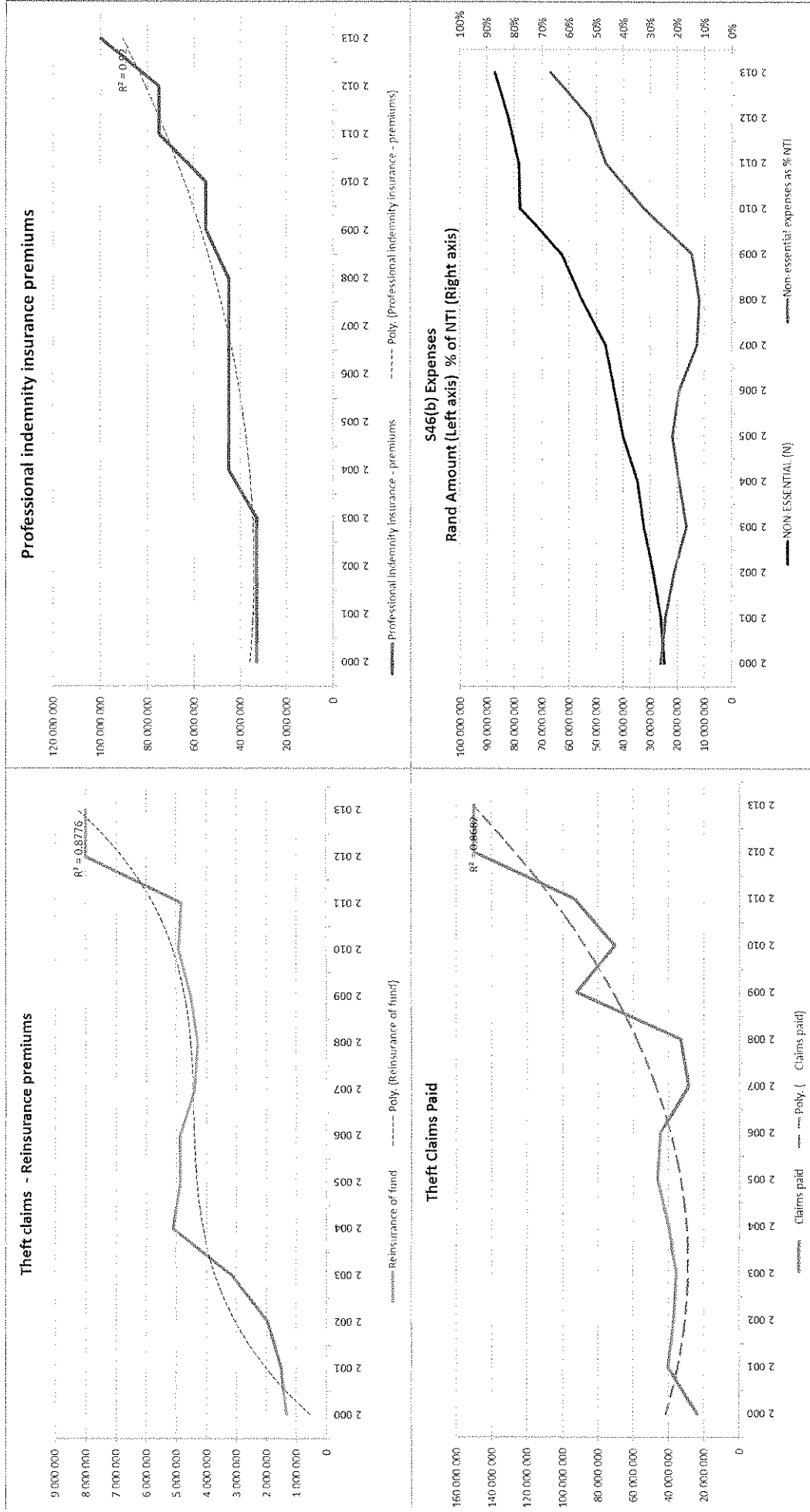


From 2003 to 2008, the relatively large gap between inflation and short term interest rates meant that interest on trust balances were high whilst cost inflation could be contained. Since the 2008-9 crisis the gap between short term interest rates and CPI has narrowed and real interest rates are at an all-time historical low. Historically low real interest rates are expected to continue for some time in to the future.



ooking at the AFF financial accounts

Appendix 5

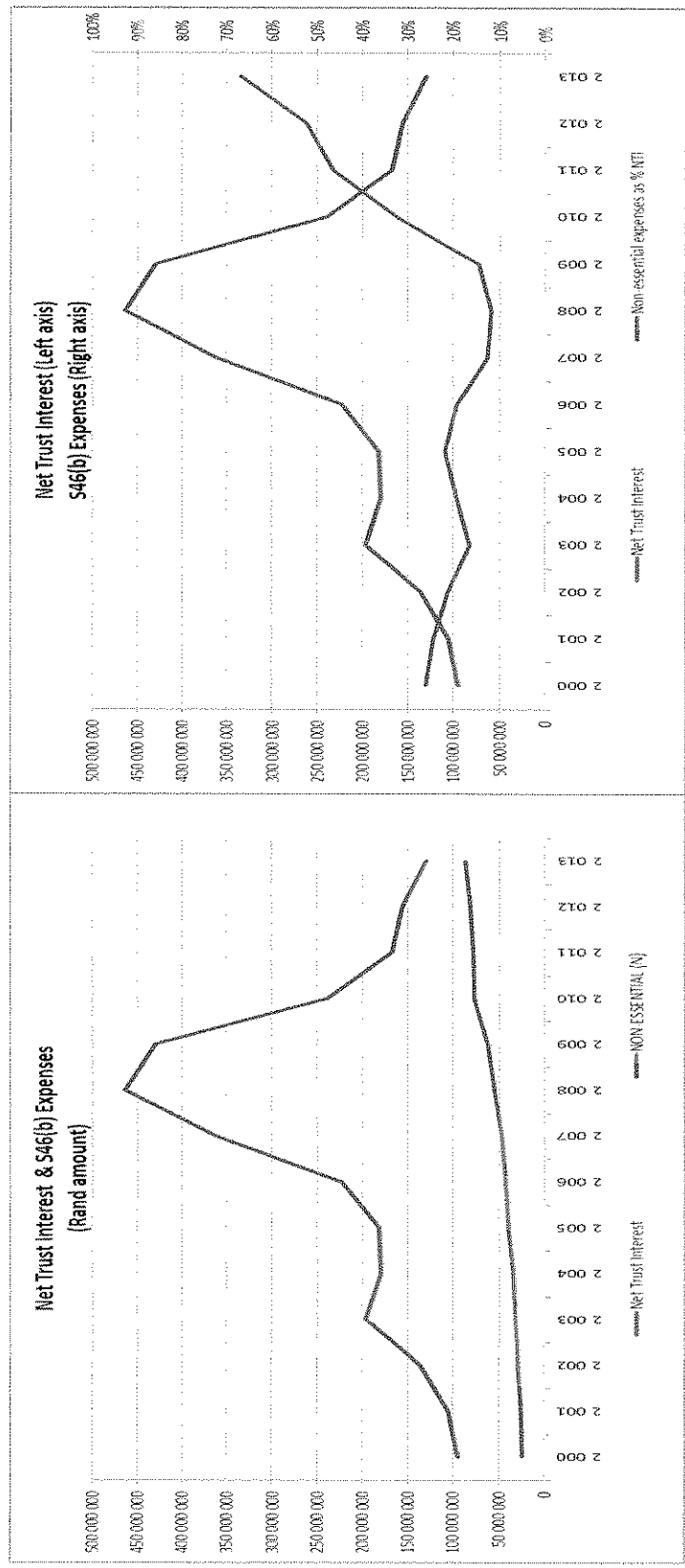


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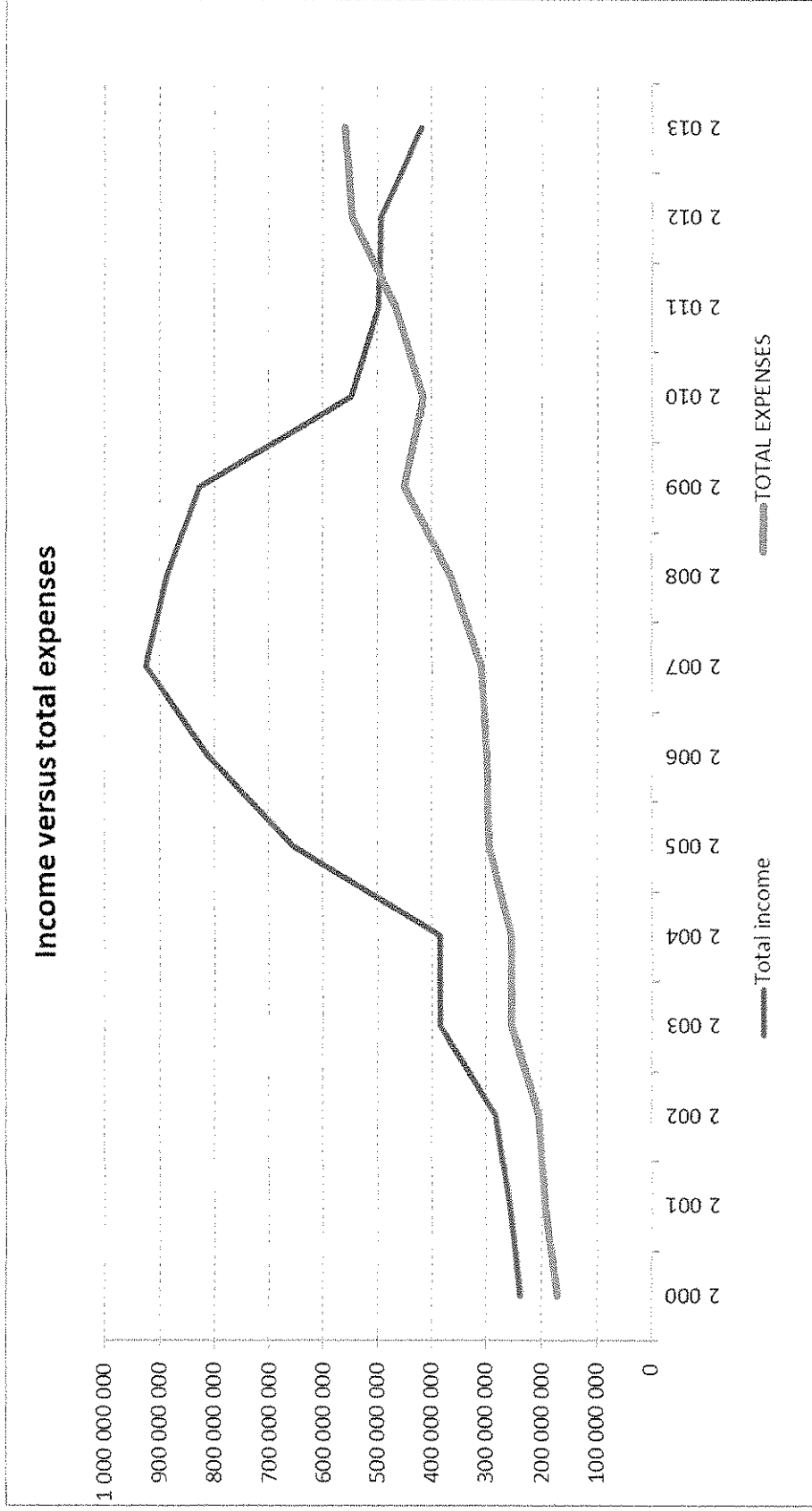
closer look at net trust income

he blue line shows the exaggerated increase in NTI in the mid-2000's and its dramatic fall after the 2008-9 crisis. The graphs illustrates the increase in the absolute amount of S46(b) expenses which coincides with the dramatic reduction in interest rates and hence NTI. As a result of a much reduced level of NTI in more recent years, the increase in S46(b) expenses has risen dramatically as a percentage of NTI.



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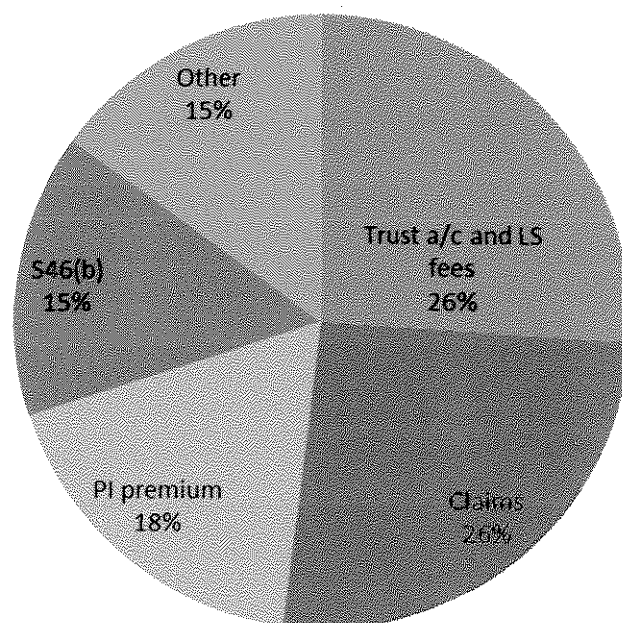
he chart of income versus expenses shows that from 2012, the AFF is expected to make an operating loss. The extent of the operating loss is large enough to warrant management developing alternative strategies to ensure the survival of the AFF.



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Composition of 2012 expenses



Quantscape

Actuarial and Asset Consulting

To: AFF "Capping" Committee

From: Catherine Fivaz

Date: 2 May 2012

Subject: **Capping of claims**

1. Introduction

My brief was to further explore the level at which claims should be capped. This follows on from my previous memorandum entitled "Planning for extreme claims experience – 2011" in August 2011 which investigated adequacy of the current level of protection of the Attorneys Fidelity fund (AFF) against individual large claims or a large aggregation of claims.

2. Considerations

The AFF's primary responsibility is towards "widows and orphans". The capping level should be set high enough so that it does not affect the average claimant. The intention is to cap unusually large claims which would be detrimental to the fund.

3. Reinsurance

The reinsurance cover is referenced in Appendix 1 for completeness.

4. Data

Robert Burawundi supplied the actual claims data, categorized by type of claim, for the calendar years 2006 to 2011 i.e. six years' claims data.

Robert Burawundi also provided the trust balances as contained on the Fidelity Fund Certificate application form for each of the four quarter ends, with the latest quarter end being September 2011. The only complete data set was the trust balances for September 2011. This was used in the analysis. I have added S78 (1) and S78 2 (a) trust balances to give the trust balances. Unless otherwise indicated, I refer to this sum and the "trust balances"

The trust balance and claims were based on 2011 nominal values to make all the data comparable from year to year. I assumed a constant rate of inflation of 10% p.a. in the main analysis. This is higher than the rate of consumer price inflation (CPI) of 6.1% p.a. over the six calendar years from 2006 to 2011. However, it is consistent with my previous analyses of claims data and the data supports the fact that the rate of claims inflation has been higher than CPI over this period. Unless otherwise stated, all the findings are based on this inflation-adjusted data.

5. Observations

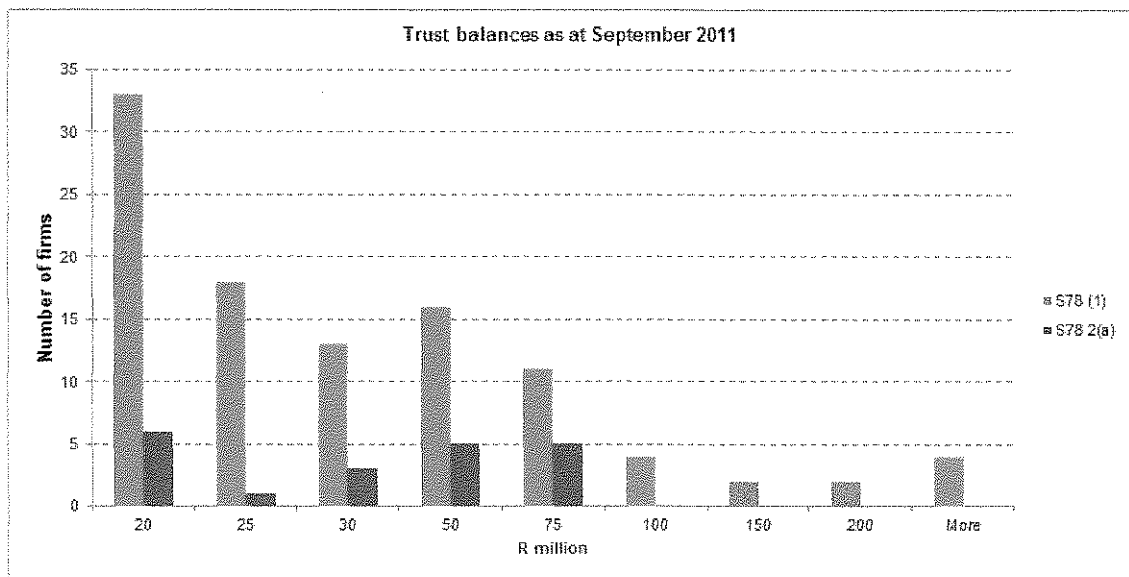
5.1 Trust Balances

The table below gives a histogram of the trust balances by size of balance. For example, the table below shows that 5 844 firms out of a total of 7 853 have trust balance of under R 1 million. 74% of the firms account for 8% of the exposed-to-risk (i.e. the amount of trust balances that is exposed to risk of theft). At the other end of the scale, the largest 9 firms account for 23% of the exposed-to-risk. This shows the concentration of exposed-to-risk in the very largest of firms. However, given the better accounting controls and improved governance of the largest firms, the potential for theft is likely to be limited but if a theft does occur, it is likely to be more damaging to the AFF. The larger firms are also likely to have a higher proportion of corporate clients (who tend to deposit larger amounts in trust). I refer to this later.

A notable feature of the data is that 10 firms had negative trust balances. Nine of the amounts were insignificant and can be ignored. There was one significant negative trust balance of R 2,6 million (Berlowitz (Anthony) Attorney from Northern Province law society). A negative balance was held by him for each of the four quarter end FFC returns.

<u>Trust balances</u> <u>(R million)</u>	<u>Number of</u> <u>firms</u>	<u>% of total</u> <u>number</u>	<u>Trust balance</u> <u>(R million)</u>	<u>Exposure %</u>
< R 1	5 844	74%	1 218	8%
1 to less than 2	790	10%	1 114	7%
2 to less than 5	723	9%	2 289	15%
5 to less than 10	281	4%	1 924	13%
10 to less than 20	123	2%	1 705	11%
20 to less than 50	61	1%	1 768	12%
50 to less than 100	22	0%	1 397	9%
100 and over	9	0%	3 455	23%
Total	7 853	100%	14 870	100%

The graph below shows the number of firms with trust balances in excess of R 20 million. There are 103 firms with balances of more than R 20 million. There are four very large firms with balances of more than R 200 million. This further illustrates the concentration of the exposed-to-risk.



5.2 Claims data

The claims data shows that there is a very strong cyclical nature of the claims pattern.

The higher level of claims and claims escalation (both in size and number of claims) exhibited since 2008 shows no abatement. It appears very likely that the lower limit of the stop loss reinsurance will be breached in 2011/12. In the next few years, the expected aggregate claims will total above the R 100 million mark but is expected to be less than the stop loss reinsurance entry point of R 150 million.

In my previous memorandum, I noted that at an expected annual aggregate claims amount of R 95 million, there is about 50% probability that the claims will exceed R 95 million in any one year. The probability of exceeding R 150 million (i.e. the first layer of the stop loss reinsurance) is 7.4% and the probability of total claims exceeding R 210 million in any year is about 0.5%.

However, if the expected aggregate claims is R 140 million, (due to either a large claim being lodged or significantly higher than expected level of aggregate claims), there is a significantly higher probability (i.e. 38% probability) that aggregate claims will exceed R 150 million in that year and hence give rise to a 1st layer reinsurance claim. There is also a much higher chance (i.e. 6.7% chance) that claims will exceed R 225 m that year and result in a 2nd layer reinsurance claim. There is a 0.7% chance of exceeding R300 million (i.e. the upper limit of the second layer of reinsurance). The chance of the aggregate claims breaching R 575 million (i.e. the upper limit of the third layer of stop loss reinsurance) is negligible.

As concluded previously, even with a much higher level of aggregate claims it is not likely that the aggregate claims will exceed the upper reinsurance limit of R 575 million which will result in the AFF having to fund the excess. For practical purposes, the AFF's aggregate claims are limited to R 150 million.

The "Claims Depart Activities Report "dated 29 February 2012 (Annexure C) notes that the fund's potential liability for 2011 stands at some R 165 million. The claims liability could be some R 500 million to R 700 million if all the notified claims were, in fact, paid.

The claims are re-valued on a regular basis. This is often negligible, but can be significant in very large claims. The data shows that the very large claims reduce tremendously in subsequent years. This is most likely the result of successful arbitration by the AFF. The result would be that claims liability is unlikely to be as high as mentioned in the previous paragraph.

Analysis by type of claim

- Third party claims have become significant since 2008 and comprise over 20% of the claims by value since 2008.
- Conveyance claims represents almost two-thirds of the claims by value. There is significant variation over the period and the conveyance claims account for 45% of the total claims in 2010 to 72% of total claims in 2006.
- Over the period, conveyance, estates and third party claims made up 87% of all claims.

It is clear that risk management of conveyance trust moneys is crucial to a successful risk management process.

Multiple defaulters

I have tabled a list of multiple defaulters below, which shows:

- There are 521 unique defaulters and 2938 claims paid. 202 out of 521 defaulters had only defaulted once. However, the top 20 multiple defaulters (by number of defaults) had more than 20 claims each.
- The top 5 defaulters comprise 23% of the total claim amount over the period.
- The top 20 multiple defaulters accounted for 35.5% of the total claim amount paid.

Multiple defaulters			
Defaulter	Number of claims	Total claim amount	% of total claim amount
MINNIE IZAK	216	24 291 809	2.4%
GOOSEN PIERRE ANDRE MAKAMU etc.	199	25 021 936	2.4%
TRANTAFILLOU NICOLAS PANAGIOTOU PANOS	114	14 306 126	1.4%
VENTER ELIZABETH	60	1 790 100	0.2%
POTGIETER JOHANNES THEODORUS	59	1 262 171	0.1%
COETZEE SARA JOHANNA	58	14 229 276	1.4%
SNYMAN IZAK DAVID	53	3 819 303	0.4%
STRAUSS JACOB PETRUS ALBERTUS (ESTATE LATE)	47	8 675 695	0.8%
MANZINI CHRISMAN TAKE-EASY	39	1 269 006	0.1%
MEYER ENSLIN	31	4 903 067	0.5%
OSTERLOH SHEENA ST CLAIR	31	9 101 047	0.9%
PHASHA KGAGUDI PINAAR (ESTATE LATE)	31	5 850 287	0.6%
METSING EDWARD MORATHI	30	2 034 121	0.2%
GROVE ANTOINE PIERRE	29	6 076 187	0.6%
DE LANGE (INSOLVENT ESTATE) FERDI	28	20 985 773	2.0%
APPIE DESMOND	27	2 196 531	0.2%
JANSE VAN RENSBURG ANDREAS FREDRICK	24	4 256 360	0.4%
NKWANA MABUSHE SOLLY	24	836 753	0.1%
BESTER LOUISA ANDRI	23	1 338 730	0.1%
DU PLESSIS PAULUS JOHANNES DU TOIT MARYNA	22	3 418 721	0.3%
TOTAL TOP 20 DEFAULTERS	1 145	155 663 000	35.5%
GRAND TOTAL	2 938	438 049 302	

6. Recommendations

My recommendations assume that the current reinsurance agreements will continue in the future (unless stated otherwise). The recommendations may need to be reviewed if there is a significant change to the reinsurance agreements.

(i) More specific cover reinsurance

The current cover does not allow for reinstatement after the first claim. This leaves the AFF exposed to the event of a second large claim in that reinsurance year. Under the current reinsurance arrangement, the second large claim could be lodged under the stop loss reinsurance contract if the fund breached the entry point of R 150 million in aggregate claims but this event is not a certainty. The lack of reinstatement of more specific cover potentially leaves the AFF exposed to a second large claim without recourse to reinsurance protection. I would recommend that the agreement is amended to ensure that the more specific cover reinstates after the first claim with the payment of an additional (usually pro-rated) premium.

(ii) Accumulate cash reserve to meet large claims

In the event of very large claims, the time required for the proper investigation of a large claim and the arbitration process is, in itself, effectively a delaying mechanism. If a large claim was imminent (and the fund would be aware of this due to its claims notification process), the AFF could allow for this by building up a cash reserve whilst the claim was still in arbitration. If the AFF did not have sufficient inflows to accumulate this cash reserve, it is prudent to notify the asset managers of a potential large withdrawal from its assets and agree on an appropriate disinvestment strategy. The AFF needs to protect itself against having to disinvest assets at an inopportune time as this is detrimental to the long term sustainability of the fund for potential future claimants.

(iii) Capping individual claims at a lower limit

I would strongly recommend that the fund cap the level of any individual claim that it is prepared to pay. It is unusual for an entity to undertake an unlimited liability unless the government is prepared to be the ultimate guarantor.

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Assuming that this is a viable solution and bearing in mind that the AFF would seek to continue to protect the average claimant, I would recommend a cap of R 5 million on individual claims. This would only exclude very wealthy or corporate clients. There are very few successful claims that have been larger than R 5 million. Wealthy or corporate clients could be advised to check on the insurance protection offered by the firm itself or the client could seek theft insurance protection themselves before the placement of trust money. The client could also be advised to offer a bank guarantee for the funds rather than place the money on trust with the legal firm. The money would thus stay in the banking system rather than be transferred into the firm's account and hence the exposed-to-risk would be minimised. Another solution could also be a combination of money held in trust (up to R 5 million), with the excess being guaranteed by the bank.

The capping of claims at a lower limit would remove the need for more specific reinsurance cover yet still protect the majority of clients.

A further risk control measure is that a trust amount over R 5 million needs to be spread over several banks so that any one bank does not hold more than R 5 million in respect of one client. This will require enforcement from the AFF as the banks are unlikely to be able to administer this ruling.

The capping limit would need to be updated for claims inflation periodically. A provision could be stipulated so that the cap can never be reduced and should increase by the minimum of the inflation rate, so that the cap can never decrease in real terms over time.

(iv) Capping individual claims at a higher limit

An individual claim can be limited to the maximum of the more specific reinsurance cover so that once the AFF has covered its portion up to the entry point; it is no longer liable for a further payment. A similar inflation updating mechanism would need to be specified so that the cap maintains its limit in real terms and does not inadvertently reduce with the passage of time.

(v) Limit on number of defaults from any one defaulter

There are several serial defaulters. It is unfair to impose a limit on the number of claims against any one defaulter, since this would prejudice potential claimants that were slow to follow up on their trust money. These are the exact clients that you would want to protect as they are more likely to be the "man on the street" as opposed to a corporate or wealthy client who would potentially follow up more speedily.

(vi) Large claim notification

In the event of a large claim, the AFF already notifies the reinsurers early on and monitors the progress of the claim viz. arbitration process.

(vii) Large account notification

Separate notification of and regular reporting on large trust accounts to the AFF is relatively easy to implement. Large accounts will come under closer scrutiny and should hence be less exposed to theft risk. The definition of 'large' accounts can be updated from year to year so that the AFF balances the increased administration resulting from monitoring these accounts against the benefits of this increased supervision.

(viii) Client trust money notification

A useful procedure would be to notify the client when their money can be released from the trust account. That would typically happen on the conclusion of a legal transaction. By notifying the client of the release of funds, the notification brings to the client's attention the need to ensure that their money is released back to them or to another party. This will encourage the client to take the initiative in the release of their funds. The increased attention on this money should reduce the probability of theft.

In particular, as stated above, improved risk management of conveyance trust moneys is crucial to a successful risk management process.

(ix) Increased monitoring of dormant trust accounts

This is linked to the point above. Dormant funds are most at risk because they are less supervised. The fund could obligate the practitioners to provide details on these accounts on a regular basis. Again, the definition of 'dormant' accounts needs clear specification so that the AFF balances the increased administration against the benefits of increased supervision.

(x) Improved data

Fidelity Fund Certificate applications

Currently, the annual application form for a Fidelity Fund Certificate (FFC) provides trust balance data. However, the lag in compilation means that the data is at least six months out of date and hence this data source is not an proactive risk management tool. Furthermore, management had previously resolved to review the FFC application form to provide improved risk data for the future. This improved data requirement and submission is unlikely to be implemented in the short term.

Bank's trust account data from banks

The AFF had requested monthly credit transaction data from the banks on S 78(1) trust accounts with effect from 1 January 2012 for risk management and reinsurance purposes. My understanding is that this has not yet been forthcoming. This data would be more frequent as well as more timeous and could provide more detail. I would recommend renewed effort for this initiative. I would further advise extending this to other S78 accounts to obtain a more complete picture of the AFF's exposed-to-risk profile.

(xi) Improved analysis

The fund is adopting several positive measures to manage claims risk such as appointing a team of forensic inspectors and establishing early warning mechanisms. Further measures can also be taken on the "back-end" of the process to aid more in-depth analysis and cross referencing of claims data and the exposed-to-risk.

- For example, reports claims data for internal or accounting purpose relates to the financial year and should be labeled as such, whereas claims for reinsurance purposes are categorized by insurance year and labeled accordingly. This will remove ambiguity when comparing data from different sources and will enable easier cross referencing.
- Record the defaulter's firm name or number to allow cross referencing between the FFC submissions and the claims data.
- List of multiple claims from one defaulter should be reported on separately. The data should be flagged when the number of claims lodged (or the value of claims lodged) is greater than a specified value for any one defaulter.

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- Improved analysis will help in understanding issues around claims inflation (regular inflation; judicial inflation etc.) as well as the influences on claims (e.g. economic downturn, changes in judicial practices, changes in claim definition) as these can significantly affect the level of both individual claims and the aggregation of claims.

Cathy Fivaz

Catherine Fivaz (B Bus Sc, FIA, FASSA)

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Theft claims reinsurance

1. Stop loss reinsurance

It is important to note that stop loss reinsurance protects the fund from aggregation of claims. Stop loss cover does not have regard to any individual claim amount per se, although a few large claims affect the aggregation.

For the 2011/12 reinsurance year, the fund bears the cost of the first R 150 million in claims in any given year. The reinsurer bears the next R 425 million and the fund bears the cost of claims in excess of R 575 million per annum.

1st layer reinsurance: entry point is R 150 million up to R 225 million

2nd layer: entry point at R 225 million up to a maximum of R 300 million

3rd layer: entry point at R300 million up to a maximum of R 575 million.

For the previous reinsurance year the fund bore the cost of the first R 100 million in claims in any given year. The reinsurer bore the next R 475 million and the fund bore the cost of claims in excess of R 575 million per annum.

2. More specific cover (previously called catastrophe cover)

The fund also has more specific cover that protects the fund against large individual claims. For the 2011/12 reinsurance year, the cover provides a limit of indemnity of R 75 million in excess of R 50 million. Thus the fund will be liable for any individual claim which less than R 50 million. If an individual claim exceeds R125 million then the fund is liable for the excess.

The cover limits are the same as in the previous year.