FINANCE PORTFOLIO COMMITTEE
20 June 2006
'BULKING' IN THE LIFE INSURANCE INDUSTRY: HEARINGS

Chairperson: Mr N Nene (ANC)

Documents handed out:
Personal Finance submission on 'bulking.'
Financial Sector Campaign Coalition submission on 'bulking.'
M Cubed Employee Benefits submission on 'bulking.' (see Appendix)
ABSA Consultants and Actuaries submission on 'bulking.'
Liberty Life submission on 'bulking.'
COSATU submission on 'bulking.'
Financial Service Board submission on 'bulking.'

SUMMARY
The Committee conducted public hearings into "bulking" in the insurance industry. Personal Finance alleged that Peter Moyo, the Alexander Forbes Group Chief Executive (Elect), said that, "We have already stated that, in relation to the historic income earned for the practice of 'bulking' we have not met the disclosure standards to which we aspire." The extent of the problem was that Alexander Forbes had mercilessly plundered retirement funds it administered over a period of at least 10 years. They also used 'bully-boy' tactics on its staff, other industry players and even service provider companies to get their retirement funds into the Alexander Forbes web.

In the process of the Personal Finance investigation, Alexander Forbes had subjected Personal Finance to legal threats and other pressures in an attempt to prevent or limit publication of the secret profit reports. There were a number of areas where advice provided by Alexander Forbes (and other) consultants was often questionable, inappropriate and not in the best interests of retirement fund members.

Many of the unacceptable practices were conceived, driven and maintained by some senior executives. Personal Finance has been told of widespread bullying of staff into accepting the unacceptable practices. Senior staff that left Alexander Forbes were forced to sign secrecy agreements and senior executives were aware of the adverse legal opinions.

Industry-wide, it was clear that the retirement funding industry had treated the retirement savings of millions of individuals as a ready source of profits and for the massive self-enrichment of greedy senior executives. For this reason, Financial Services Board investigations were required into all companies with similar practices. A Judicial Commission of Inquiry into the retirement funding industry was also required to find out about the high costs, Pension Fund Adjudicator rulings, secret profits, unmanaged conflicts of interest and the need to ensure retirement fund members receive reasonable retirement benefits.

A full Financial Services Board investigation into Alexander Forbes was needed. If necessary, Alexander Forbes should be placed under judicial or joint management for the duration of the

investigation if it failed to co-operate fully. The Alexander Forbes self-investigation is not sufficient.

The Financial Sector Campaign Coalition said that revelations of secret profits and unscrupulous practices in the industry negated the commitment to transformation. They supported the call by the Registrar of Pension Funds for “full and frank disclosure of all practices that amounted to the making of secret profits or gaining an “improper benefit,” and the naming and shaming of companies that failed to disclose. There was need for full public disclosure of all settlement deals with retirement fund administrators and they supported the calls for a Judicial Commission of Inquiry into the retirement funds industry. The terms of reference must be wide to expose the extent and nature of the practices and to ensure the remedies prevented repetition.

mCubed Employee Benefits said their bulking arrangement was not illegal, their disclosure was sufficient, and their members benefited from the bulking arrangement. They agreed that disclosure of bulking should occur but the extent and the format thereof had to be regulated. They had made disclosure to their funds not because they deemed it to be a regulatory requirement but rather a marketing tool as it highlighted the effectiveness and efficiencies of their bulking arrangement, which benefited the participating funds. The Committee could instil confidence into the financial services sector by taking into account that bulking was not illegal and that they should not penalise the entrepreneurial spirit for putting in place a structure that benefited the clients and the administrators proportionately.

ABSA Consultants and Actuaries said that their philosophy was to always act in the best interest of their clients and not to obtain unjust/improper benefit from any client. They did not have any bulking arrangement with a bank. Each fund under administration operated through its own current account and the client was not coerced into making use of ABSA Bank. Their income and cost sharing arrangement was not unlawful and there was no prejudice to any client or fund.

Liberty Life said that they administered different types of funds. These included retirement annuity funds where there was no employer-employee relationship and funds with employer – employee relationships. They confirmed that they believed that they had not breached their obligations as a pension fund administrator by making secret profits to the detriment of the funds they administered. On “bulking” in particular, they confirmed to the Registrar that Liberty Life derived no benefit from monies held in the bank accounts of privately administered funds which they administered.

MINUTES
Personal Finance submission
Mr B Cameron, the Editor of Personal Finance magazine, began by putting the problem into context by reading out four quotes. In an open-letter advertisement in May 2006, Peter Moyo, the Alexander Forbes Group Chief Executive (Elect), said that, “We have already stated that, in relation to the historic income earned for the practice of ‘bulking’ we have not met the disclosure standards to which we aspire.” The Financial Institutions (Protection of Funds) Act also said that, “Anyone who controls the funds of a financial institution, which includes a retirement fund "must, with regard to such funds, observe the utmost good faith and exercise proper care and diligence.”

The Common Law of Agency said that any profit made by an agent in agency transactions may be claimed by the principal despite the fact that the agent may have acted in good faith and without the intention to deceive the principal. The agent is required to show it made complete disclosure to the principal and that the principal acquiesced to the transaction. The principal can acquiesce to a transaction before or after the event, but the waiver by the principal of its right to claim the value of any undisclosed profits from the agent must be given freely and with full knowledge of the material facts.

The court in the 1921 case of *Robinson v Randfontein Gold Mining Company* held that, “Where one man stands to another in a position of confidence involving a duty to protect the interest of

that other, he is not allowed to make a secret profit at the other's expense or place himself in a position where his interests conflict with his duty."

Mr Cameron then said his presentation centered on Alexander Forbes because of secret settlements they made with Bidvest and Amplats and because they were the biggest retirement fund administrator. Nearly every unacceptable practice in the industry had also happened at Alexander Forbes over the last 10 to 15 years. His evidence indicated a pervasive culture of unacceptable corporate governance and an alarming lack of ethical behaviour. It was substantially more than a failure to properly disclose bulking activity. There was also evidence of unacceptable behaviour at numerous other companies that had been passed on to the Financial Services Board (FSB).

The extent of the problem was that Alexander Forbes had mercilessly plundered retirement funds it administered over a period of at least 10 years by: deliberately misleading naïve, ill-trained fund trustees; conspiring with employers (mainly over surplus distribution); creating a false sense of security with a massive on-going advertising campaign; claiming that it was independent and acted in the best interests of consumers, while the opposite was true; failing to properly declare and manage serious conflicts of interest; failing to act with fairness, due care and diligence towards the funds to which it had a fiduciary duty and failing to observe both the spirit and the letter of the law. This included the laws of Parliament, common law and case law. They also used 'bully-boy' tactics on its staff, other industry players and even service provider companies to get their retirement funds into the Alexander Forbes web.

In the process of the Personal Finance investigation, Alexander Forbes had subjected Personal Finance to legal threats and other pressures in an attempt to prevent or limit publication of the secret profit reports. They had given Personal Finance false information on a number of occasions, attempted to discredit reports in Personal Finance by claiming in statements to retirement fund trustees that the reports were, among other things "vindictive, sensational, biased and incorrect". They had also failed to answer many questions on issues of unacceptable activity that had been unearthed by Personal Finance.

The final test of any cover-up would come with the joint report of Ernst & Young and Deloitte & Touche into the unacceptable practices. A further test was whether the full report was released to trustees and members of retirement funds.

It was important to show how Alexander Forbes operated. They built a client base of retirement funds by offering comparatively low administration fees. The low fee structure was made possible by a wide range of secret and not explicitly disclosed costs and profits. A 'one-stop-shop,' from trustee training to provision of all products and services by itself, associated companies and "preferred providers" was created. Alexander Forbes claimed it provided "independent" advice and services, but in effect it offered "inter-dependent" rather than "independent" advice and services. It incentivised the company and other consultants with a "wink-and-a-nudge" bonus system based on the amount of business directed to Alexander Forbes, its associated companies and preferred service and product providers. These bonuses were not explicitly declared to fund trustees. For example, for Investment Solutions (IS), the bonus was an average of 3% of assets.

As a result of these activities, retirement fund members were disadvantaged by Alexander Forbes generating 'secret' or 'not explicitly disclosed' profits; commissions; rebates; discounts; or fees across a wide range of products and services. These were not limited to bank accounts. Members were also given inappropriate advice as a result of substantial unmanaged conflicts of interest leading to the use of inappropriate products and services. This resulted in indirect opportunity costs and additional direct costs. The issue here was not how well retirement funds had done, but how much better they could have done.

'Secret or 'not explicitly disclosed' profits were made by Alexander Forbes in many ways. Harmful 3D Assurance investment policies (exposed by Personal Finance in 1998) had double costs

linked to them, once for asset management and then for commissions. The ‘bulking’ of bank accounts (exposed by Personal Finance in February 2006) continued for two years despite legal opinion that it was not lawful and secret settlements with some large funds were discovered. An imprest account with an associated company existed where benefits and contributions were channelled through a third party. Interest was earned and attributed to shareholders of the associated company. Initially, Alexander Forbes and Standard Bank handled this imprest account together, and then Standard Bank pulled out leaving Alexander Forbes to act alone. (This was exposed by Personal Finance in April 2006).

In insurance cash flows were received from premiums and benefits on both short and long term insurance. Payments of contributions to underwriters were delayed by as long as 45 days. Interest was earned in the intervening period while insurers remained at risk during the intervening period so they could charge higher premiums. (This was still being investigated by Personal Finance). Broking of re-insurance was made a condition for directing risk business to a preferred provider with Alexander Forbes earning commission on the re-insurance contract. Commissions, rebates and administration fees were paid for directing out-sourced pensions. This may result in a higher capital (guarantee) charge and lower future pension increases for pensioners.

Alexander Forbes owned broker companies directing business to them and owned short-term underwriter Guardrisk. They delayed benefit payments and gave housing loans to retirement fund members where it was virtually obligatory to use the Alexander Forbes/ABSA joint venture company. The use of another bank resulted in an ‘administration’ charge of about 2% which made it uncompetitive. There was a disability assurance screening service for a fee, on behalf of underwriters before payment of the disability assurance benefits. This was a secret fee and amounted to a conflict of interest.

In asset management, IS was the multi-manager subsidiary. While it was still a listed company, its profits were seen as excessive in relation to fees charged to retirement funds. These additional profits came from arrangements with underlying asset managers. These arrangements included relatively high fees of up to 75% and fees paid by IS to underlying asset managers of up to 25%. In return, underlying asset managers would charge performance fees that were often not disclosed or agreed to by retirement fund trustees. They would ‘churn’ portfolios, often without proper controls by the multi-manager and retirement fund trustees, which would increase costs, reduce returns and allow for rebates on stockbrokers fees.

They would lend scrip (at a price) owned by retirement funds and individual investors in the derivative markets which would entail counter party risk. As part of a tax avoidance scheme, there were dividend sales which would have tax consequences for retirement funds as they then earned interest instead of dividend income. There were additional asset management charges at multi-manager and underlying manager levels and charges for changing the asset composition of a new retirement fund client.

They ‘punted’ structured products where full costs and commissions were seldom declared. There was a fee split arrangement with Morgan West. Many of these products were inappropriate for retirement funds. Their joint venture agreements with Caveo, an IS/Peregrine hedge fund multi-manager developed an inappropriate investment fad for retirement funds as they needed hedging, but these were not hedge funds. They had joint ventures with Frank Russell for international investments, which were not necessarily bad, but the cost structures were unclear. As a result of all this increased investment choice, most members were unable to choose properly.

There were a number of areas where advice provided by Alexander Forbes (and other) consultants was often questionable, inappropriate and not in the best interests of retirement fund members. These included the drive from defined benefit to defined contribution funds. The consequences of this were that the risk transferred to members, creative ways to raid surpluses

were developed and it opened the way for more business to IS.

The wide investment choice for individual fund members was often too conservative or aggressive, and mostly at an additional cost. Members always had to use the products/services of Alexander Forbes, its associated companies and preferred providers. The issue was the opportunity cost, that is, what they were missing out on from using other providers.

Mr Cameron saw the role of senior executives in Alexander Forbes as being crucial to the company's abuses. Forbes Life (a company with a limited, linked life licence) was 100% owned by Alexander Forbes. Ownership changed by more than 25% (with the Registrar of Long Term Insurance not notified timeously as required). The new minority shareholders were all senior executives and the Alexander Forbes Board approved the change of ownership retrospectively. The name of Forbes Life was changed to Investment Solutions and assets sold or transferred from Alexander Forbes to Investment Solutions pre-listing. There were questionable valuations made. For example the Alexander Forbes subsidiary, Multirand had initially valued at R60 million. This was changed to R20 million and sold to Investment Solutions. (The role of PricewaterhouseCoopers (PwC) in the valuation changes was also an issue).

The new minority shareholders of Forbes Life (Investment Solutions) were Graeme Kerrigan, former Chief Executive and Chairman of Alexander Forbes. He had 11 million shares and made more than R100 million. Leon Lewis, the former Joint Managing Director also had 11 million shares and made more than R100 million. Former Senior Executives Gary Herbert, Dick Wood and Rael Gordon, the first Chief Executive Officer (CEO) of Investment Solutions, and who has resigned as CEO of Alexander Forbes, without making a single statement on the secret profits issue all made more than R50 million. Kerrigan, Lewis and Gordon, have to a greater or lesser extent, also received "free" stakes in other associated companies such as significant share options. They were wealthy beyond the imagination of ordinary fund members, at the expense of those fund members.

Many of the unacceptable practices were conceived, driven and maintained by some senior executives. Personal Finance has been told of widespread bullying of staff into accepting the unacceptable practices. Senior staff that left Alexander Forbes were forced to sign secrecy agreements and senior executives were aware of the adverse legal opinions, (bank account bulking and the imprest account) but did not halt the practices. Secret profits and poor governance led to higher company profits, which led to a higher share price, which led to massively enriched executives, which led to poorer pensioners.

A full FSB investigation into Alexander Forbes was needed. If necessary, Alexander Forbes should be placed under judicial or joint management for the duration of the investigation if it failed to co-operate fully. The Alexander Forbes self-investigation is not sufficient. An investigation into whether any individuals contravened laws, such as the Financial Institutions (Protection of Funds) Act, the Pension Funds Act, the Long Term and Short Insurance Acts, the Companies Act and the extent of their personal liability was also required.

Industry-wide, it was clear that the retirement funding industry had treated the retirement savings of millions of individuals as a ready source of profits and for the massive self-enrichment of greedy senior executives. For this reason, FSB investigations were required into all companies with similar practices. A Judicial Commission of Inquiry into the retirement funding industry was also required to find out about the high costs, Pension Fund Adjudicator rulings, secret profits, unmanaged conflicts of interest and the need to ensure retirement fund members received reasonable retirement benefits.

Consideration should be given by the National Treasury to establish fully-funded industry sector retirement funds such as the Government Employees Pension Fund with services and products out-sourced to the private sector. The funds would provide minimum pensions, allowing the private sector to provide top-up retirement products. Treasury also had to consider establishing

an independent academy for the training of trustees.

Discussion
Mr K Moloto (ANC) said that some of Mr Cameron's revelations were shocking but there had to be focus now on the way ahead. What would be the best remedies to deal with the conflict of interest issues? What legal remedies did he propose to regulate the issue of secret profits?

Mr Cameron said that there should not be a conflict of interest in the first place. Trustees need to be trained to identify those conflicts. This lack of education was one of the main reasons for the abuse. There was enough legislation and case law to deal with the issue of secret profits. The laws just needed to be applied fully.

Mr I Davidson (DA) said the presentation made him feel "uncomfortable" because Alexander Forbes was not present to defend itself. The presentation contained a slew of uncontested, unsubstantiated allegations. Where to go to from here? Have any of these allegations been put before the FSB and the Treasury and implicated parties like ABSA and PwC?

Mr Cameron replied that the Personal Finance investigation had begun about 18 months ago. All the information was checked from three sources to ensure accuracy and reliability. They had asked questions of Alexander Forbes on everything in the presentation but they simply did not reply. They admitted that they had not spoken to PwC, but there was evidence that what happened there was incorrect. Their correctness had cost Alexander Forbes R380 million.

Financial Sector Campaign Coalition (FSCC) submission
Mr I Mputha said that revelations of secret profits and unscrupulous practices in the industry negated the commitment to transformation. The variety of unscrupulous business practices involved secret profits from "bulking" of bank accounts. There was nothing wrong with bulking, but everything was wrong with secret profits, imprest funds and profit-driven advice. This was very worrying, especially where fund administrators did trustee education. Smaller firms did admit wrongdoing but the true extent of the activities was unknown.

They supported the call by the Registrar of Pension Funds for "full and frank disclosure of all practices that amounted to the making of secret profits or gaining an "improper benefit," and the naming and shaming of companies that failed to disclose. They welcomed statements by the Deputy Minister of Finance that making secret profits from bulking was, "tantamount to taking away benefits from pension fund members without their knowledge or approval." They also commended the Committee for holding these public hearings.

If poor people were caught "taking away benefits" it would be called theft. They would be prosecuted to the full extent of the law. Repaying hundreds of millions and donating a small "fine" is tantamount to a slap on the wrist for a multi-billion rand company. Alexander Forbes admitted "taking away" benefits of R386 million. This was equivalent to stealing 75 million loaves of bread or 75 000 cell phones. Poor people were jailed for stealing one loaf of bread or one cellphone. This led to the inevitable question: was there one law for the rich and another for the poor?

There was need for full public disclosure of all settlement deals with retirement fund administrators. Newspaper adverts claimed Alexander Forbes donated R12 million to a FSB trust for consumer education, including Retirement Fund Trustee training. Donations must not be a "Get Out of Jail Free" card, and consumer education was not Retirement Fund Trustee Training. Full details of all Trustee Training must be provided to the National Economic Development and Labour Council (NEDLAC) in terms of its Financial Sector Summit agreements mandate.

They supported the calls for a Judicial Commission of Inquiry into the retirement funds industry. The terms of reference must be wide to expose the extent and nature of the practices and to ensure the remedies prevented repetition. Justice must be seen to be done and the law must take its course. Repaying secret profits and donations to the FSB cannot replace prosecution.

Government must speed up the retirement funds law reform process and introduce appropriate penalties for those who contravene the law.

Discussion
Mr B Mnguni (ANC) said that the FSCC questioned the training of trustees by administrators. Did they not think they were doing a good job?

Mr Mputha replied that trustee training should be independent from the companies that provided the service. The level of training could be compromised.

mCubed Employee Benefits submission
Mr R Olfsen, mCubed Director, said that they agreed that disclosure of bulking should occur but the extent and the format thereof had to be regulated. Some administrators charged a flat fee of R150 per fund to participate in their bulking arrangement. The smaller funds benefited from being bulked up with the lager ones but the flat fee resulted in the smaller funds incurring proportionately a larger share than the larger funds. Here quantum had been disclosed, but the fairness of the practice was debatable.

Some administrators disclosed their bank bulking arrangement sharing in a proportionate amount of the interest earned, after deducting the bulking fees and additional bank charges. This bulking had the effect of reducing overall bank charges by providing a fixed lower bank charge per fund per month and an increased rate of interest earned proportionately. In this situation there was disclosure but the calculation of the quantum could far exceed the benefits derived.

They had made disclosure to their funds not because they deemed it to be a regulatory requirement but rather a marketing tool as it highlighted the effectiveness and efficiencies of their bulking arrangement, which benefited the participating funds.

Alexander Forbes had undertaken to pay R380 million to its funds. What was the implication and practicality of this to the administrator, who would bear the cost of this calculation and the administration to distribute the money to the current and former members? Would the cost exceed the benefit to the member?

The Committee could instil confidence into the financial services sector by taking into account that bulking was not illegal and that they should not penalise the entrepreneurial spirit for putting in place a structure that benefited the clients and the administrators proportionately. Situations could arise where investors would become too afraid to act for fear of future regulatory determinations. A clear set of guidelines needed to be put in place so that administrators were aware of the parameters in which they could operate.

This would enable the entrepreneurs to use their skills to look at ways to reduce and make fees more cost effective within this regulatory framework. Nothing should be left to interpretation. Their obligations and conditions in which they had to operate had to be made clear.

In conclusion, their bulking arrangement was not illegal, their disclosure was sufficient, and their members benefited from the bulking arrangement.

Discussion
Mr Mnguni asked: if they did disclose, how much went to the funds, and how much did the company keep?

Mr Olfsen replied that they kept about 10% of the funds received from “bulking.”

Mr Moloto asked if the administration fee they charged the funds was sufficient for their costs. What extra work did they do to deserve the fee for “bulking?”

Mr Olfsen replied that it took a lot of administration to negotiate the “bulking” rate. It was not as easy as it sounded. There also had to be administration of the administration costs. These included the interest received and the bank charges applied. These figures changed every year, and it took a lot of work to ensure that the scheme remained profitable. “Bulking” was essential to the industry and it was through “bulking” that the members could get other benefits.

ABSA Consultants and Actuaries (ACA) submission
Mr Grobelaar said that they provided administration services; advisory services; actuarial services and asset consulting services. They did not provide asset management services or risk underwriting. Their philosophy was to always act in the best interest of the clients and not to obtain unjust/improper benefit from any client. The relationship between administrator and retirement fund was normally a long-standing one.

The ACA did not have any bulking arrangement with a bank. Each fund under administration operated through its own current account. The client was not coerced into making use of ABSA Bank, and in fact some held accounts with other banks. ACA negotiated above average rates such as 2 - 3% above market rates. Funds did not pay bank charges but favourable conditions were given for funds that did make use of ABSA bank.

ACA was a wholly owned subsidiary of the ABSA Group. There was the normal distribution of income and costs within the Group. The inter-group margin sharing arrangement, through which a portion of the margin of the Bank was passed on to ACA in lieu of services rendered was the system used. There was also an inter-group division of costs such as IT costs, advertising costs and so on.

This income and cost sharing arrangement was not unlawful and there was no prejudice to any client or fund. It was a flexible group arrangement that varied from time to time and therefore could not sensibly be disclosed. It did not form part of the fee for services provided to a fund and the ABSA Group as a whole did not derive any additional benefit.

Discussion
Mr Davidson asked why they did not bulk. The FSB itself had said that with full disclosure, it was actually beneficial.

Mr Grobelaar said that when they got a legal opinion a while ago on bulking, it was still a grey area. Each fund was privately administered so they decided against bulking. However, to ensure that clients were not prejudice, they negotiated with their banking division to get the funds better rates.

Mr Mnguni asked how they defrayed their costs if the funds did not pay bank charges.

Mr Grobelaar replied that they negotiated with their banking division to put together attractive packages so that they could get more clients. This included better rates and no bank charges.

Liberty Life submission
Mr D Jewel, the Executive Director of Actuarial and Industry Affairs, said that pension funds provided retirement benefits and, in many cases, other benefits such as death benefits. In addition, disability benefits as a lump sum or income protection were often provided in conjunction with fund benefits, although usually through separate legal vehicles.

Any entity that acts as a pension fund administrator must be registered for this in terms of the Pension Funds Act. Pension fund administrators may administer a fund’s contributions and benefits, or its investments, or both. A written administration agreement is entered into between the administrator and the fund, setting out the administrator’s duties. Legally, the administrator acts as an agent of the fund, and stands in a position of trust (fiduciary relationship) to the fund.

Liberty Life administered different types of funds. These included retirement annuity funds where there was no employer-employee relationship. There was voluntary membership, with individual members, where members chose the investment structure, retirement dates (within limits) and the contribution size. Their total assets were about R25 billion.

There were also funds with employer – employee relationships. They were either free-standing funds for a single employer or "umbrella" funds which enabled multiple employers to participate in a single fund. There were 10 000 employer groups, in about 2 000 separate funds with the other 8 000 participating in umbrella funds. The total assets were approximately R20 billion. Each employer group had an average of 35 members. Their focus was on retirement provision for employees of Small to Medium Enterprises. This was generally an under-serviced part of the employment market in respect of access to financial services.

The Registrar of Pension Funds made an enquiry into the practices of all pension fund administrators. It requested information on "bulking" of credit balances of pension fund bank accounts, cases where a pension fund administrator was part of a group including a bank and other issues that related to the responsibilities of pension fund administrators, particularly regarding practices "whereby secret profits were made directly or indirectly by administrators or associated companies to the detriment of pension funds whose money they controlled."

Liberty Life understood "bulking" as the notional aggregation of bank accounts in order to negotiate more attractive terms for the benefit of the account holders. Liberty Life responded to the questionnaire. They confirmed that they believed that they had not breached their obligations as a pension fund administrator by making secret profits to the detriment of the funds they administered. The funds Liberty Life administers fall into two broad categories: privately administered funds and underwritten funds.

On "bulking" in particular, they confirmed to the Registrar that Liberty Life derived no benefit from monies held in the bank accounts of privately administered funds which they administered, and bulking was not an issue for underwritten funds. Privately administered funds were a very small proportion of Liberty Life's fund business. These were funds whose assets were not necessarily limited to policies of insurance, but usually owned other assets too.

Where they do own insurance policies, the policies were not limited to Liberty Life policies. These funds had their own bank accounts, and Liberty Life administered contributions and benefits paid into and out of these accounts. Liberty Life also administered payments to and from other service providers such as investment managers, or other insurers with whom the funds had contracted. All administration fees charged by Liberty Life were fully disclosed in the administration agreements, and all interest earned on credit balances in the fund bank accounts was passed on to the funds. Liberty Life earned no other fees or rebates on these credit balances.

The majority of funds administered by Liberty Life were underwritten funds. As shown by the average size of employer groups that they administered, it would not be economically viable for most of these funds to arrange their own separate investment management, or other services separate from the fund administrator.

The practical duties of an administrator of an underwritten fund were different to those where the fund (and not the insurer) owned the underlying assets. In the latter case, the administrator actually held and controlled the underlying assets (for example cash in a fund bank account) on behalf of the fund. This does not apply to underwritten funds, where the only assets to be administered were insurance policies. This is why the question of "bulking" did not arise with underwritten funds.

Despite this practical distinction, all pension fund administrators were legally required to act in good faith in dealing with whatever type of pension fund assets they controlled. Liberty Life was no different. Liberty Life had a fiduciary duty to any fund it administers to ensure that the fund's

assets were properly administered for the purpose of providing the benefits owing to members in terms of the fund rules.

For underwritten funds, the fund's benefit promise was to provide its members with the benefits provided, in terms of the fund rules, by the insurance policy. Liberty Life therefore had a duty to the funds to ensure that the terms and conditions of the Liberty Life policy were adhered to. However, where Liberty Life was the administering insurer, but the fund owned policies issued by other insurers, the other insurer would have the obligations in terms of the policy, while Liberty Life would retain the administrator's obligations. As they had advised the Registrar of Pension Funds, they believed that they complied with these duties.

Discussion
Mr Mnguni asked how they brought down their administration costs if they did not keep some profits.

Mr Jewel said that their retirement fund offerings were sold as packages or bundles. The administration costs were included in these packages. The administration fees were to ensure that the fund was administered, but the whole package had to be structured to enable the company to make a profit.

Mr Davidson said that it seemed as though Liberty Life was partaking in a form of bulking. The issue therefore was: what type of disclosure did they make to their clients?

Mr Jewel replied that all the elements of the packages were disclosed to clients. These included the administration fees and asset management fees. They were disclosed at the point of sale via quotations and were reviewed annually. Also, every itemised charge on the scheme over the course of the year was disclosed.

The meeting was adjourned.

APPENDIX
M Cubed Employee Benefits: R Olfsen(Director) L Wingrove-Gibson(Head of Legal & Compliance)

Submission

- Parliamentary Submission

- Annexure A -General Circular to Pension Fund Administrators

- Annexure B - mCubed Employee Benefits Submission to the FSB
- Annexure C - Invitation to the Public hearings on the practice of "bulking" .

- Is Bulking Unlawful?

- Disclosure

- Implication of Retrospective Application · Conclusion

Parliamentary Submission

- **Duty of the Regulator**

- To regulate the environment that provides protection for the Public and the practices that should be adopted by the Administrator

- Maintain public confidence in the Retirement Fund Industry and the Financial Sector as a whole

- **Objective of this Portfolio Committee**

- Afford the industry role players an opportunity to brief the committee on its role if any and allow for proper debate;

- In line with Parliament's vision, provide for a national forum for public consideration of issues and seeking to act as the voice of the people.
