

**RETIREMENT FUND GOVERNANCE IN SOUTH AFRICA**

By

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## CONFIDENTIALITY CLAUSE

It is my wish that the contents of this paper remain confidential and not be circulated in any form for a period of not less than five years.

Yours Sincerely  
Vuyani Pikashe

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## DECLARATION

I hereby declare that this research has not been previously accepted for any degree and is not being currently submitted in candidature for any degree.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_ 096084

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*c/.....*

## ABSTRACT

The retirement fund industry has seen a number of scandals both locally and internationally recently. These have left the trustees, the custodians of the large sums of monies in retirement funds, exposed to lawsuits. This is so because the fund members and retirees blame these trustees for negligence and lack of foresight in putting in place prudential standards by which their monies should be managed.

These prudential standards are encompassed in corporate governance, as we will appreciate.

Retirement fund governance is a subset of corporate governance; it is the mirror image of the corporate governance of a company, which consists of a set of relationships between company's management, board, shareholders and other stakeholders. The same principles that apply to business assets in general also apply to the management of pension assets.

This study set out to ascertain whether or not retirement funds in South Africa do comply with the governance guidelines as set by the Financial Services Board (FSB).

I selected a sample of 300 fund trustees but excluded the principal officers and tried to select an equal number from employee elected and employer appointed, a balance that proved to be extremely difficult to strike.

The sample was randomly drawn using my colleagues for referrals as well as just calling a company asking for a principal officer who would refer me to the trustees. (I received a great deal of cooperation from the principal officers to this end). The participants represent a wide spectrum of industry sectors. They represent manufacturing, auto and motor industry, local government and a few from the financial services industry.

I used a 23-question questionnaire conducting interviews both telephonically and face-to-face interactions as well mail.

I managed to receive 87 responses from face-to-face interactions locally (Port Elizabeth), 67 responses from the mail and 60 from telephone interviews. I used a software program called statistica 6.1 to analyze my data and produce the frequency tables and graphs.

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## CHAPTER ONE

### 1.1 INTRODUCTION.

The retirement fund industry is constantly evolving to reflect changes in our unique South African environment. There are a number of new trends in the industry like on-line access to member information and total flexibility in all aspects of retirement and risk benefit management are now very common.

The movement of risk from employer to members through the shift from defined benefit (DB) to defined contribution (DC) arrangements, greater demands from members and an avenue for members to register complaints, has increased the risk and accountability of trustees.

Trustees are required to demonstrate how they have safeguarded the interests of the fund members and complied with the demands of their fiduciary duties in every decision they make.

Ensuring that trustees can demonstrate that they have acted in good faith is the cornerstone of a system of good governance.

Good governance and proper procedures are therefore no longer an ancillary but a prerequisite if trustees are to effectively manage their funds properly.

Furthermore, the industry has seen a number of scandals and precedence setting cases recently.

The Enron corporate scandal highlighted the potential damage that malfunctioning corporate governance can inflict on retirement savings especially from retirement funds that ignore the significance of good governance.

The Old Mutual vs. CAF case (which I'll expatiate on later), the Maxwell scandal in the United Kingdom, the Conrad Black scandal in Canada and quite recently the WJ Morgan vs. the Joint Municipal Pension Fund (where some trustees allegedly accepted some kickbacks from WJ Morgan) are just some of the instances where retirement fund governance has come under a great deal of public scrutiny.

This study endeavors to address the question of whether trustees are currently complying with the principles of good governance

## **1.2 BACKGROUND OF THE STUDY**

Retirement funds are charged with the welfare of beneficiaries and retirees and they carry a heavy burden of responsibility and yet they have a considerable discretion in fulfilling their goals and objectives.

These funds collect contributions, invest accumulated assets with asset managers and distribute income to beneficiaries through their retirement. On the face of it, these are simple functions and are easily mapped. However, considering the vast sums of money involved functional simplicity is hardly an adequate characteristic of those funds.

Retirement funds must be managed. They have administration responsibilities, make decisions regarding entitlements and benefits and they must ensure that long-term obligations are met in the context of risk and uncertainty. As such, it is arguable that retirement funds are like any other economic organizations in that they have goals and objectives as well as procedures by which those goals and objectives are realized. But most importantly they must comply with the principles of good governance.

The King Commission issued a report on corporate governance, which followed on from increased scrutiny, and focus on corporate governance practices and procedures especially in the United Kingdom.

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Much effort and energy have been spent by boards of directors and senior company management in improving their governance controls and procedures to ensure that they comply with the King Report on Corporate Governance.

The duties of being a trustee of a retirement fund may be considered more onerous than those of a company director, as a retirement fund trustee is responsible for safeguarding the retirement benefits of the fund's members many of whom are not financially astute as the average shareholder especially in the South African context.

How are these funds managing their assets, the interests of members and compliance with the ever increasing regulatory complexities, more onerous expectations and ensuring that proper control is exercised over the fund's administration?

Are trustees aware of their fiduciary and legal duties, and what steps are they taking to ensure that they discharge these effectively to alleviate any risks that may accrue in their personal capacities?

This study endeavors to answer some of these questions and maybe act as a foundation for a more in-depth study in this area of governance.

### **1.3 MOTIVATION FOR THE RESEARCH.**

Retirement fund trustees carry a huge responsibility to effectively manage the benefits of their members. The basic point to ponder is whether they carry out this mandate effectively.

Retirement fund trustees have come under a lot of scrutiny recently and we're seen this happening worldwide. At the heart of this is the governance issue.

Many commentators are arguing that retirement fund governance is very much ignored by the majority of fund trustees.

They cite the following governance mechanisms as the most ignored by trustees.

- Identification and management of risks.
- Appropriate controls to ensure that all persons and entities with operational and oversight responsibilities at in accordance with the objectives set out by the fund.
- Reporting channels between all the persons and entities involved in the administration of a fund (those ensure the effective and timely transmission of relevant and accurate information)
- Disclosure of information/communication to members on a timely and satisfactory manner.
- Identification, monitoring and where necessary to address conflicts of interest.
- Performance assessments of trustees and service providers.
- Efficient communication channels with the fund.
- Redress mechanisms for members and beneficiaries.

Furthermore, it is evident that good retirement fund governance has gained momentum internationally and has become an imperative for every retirement fund. Corporate scandals like Enron has also highlighted the potential damage that malfunctioning corporate governance can inflict on retirement savings especially from retirement fund that given the significance of governance. There have also been other retirement court cases and scandal like the OM vs. CAF case (which I'll expatiate on later), Maxwell scandal in the UK and the Command Black scandal in Canada to mention but a few. These all drew a serious attention on how people's retirement savings were handled by their custodians (trustees).

On November 2000 Deloitte and Touch conducted a study on retirement governance interviewing (only) principal officers form 41 funds. Their findings were that retirement funds are not governed effectively and efficiently in SA.

As a player in the retirement fund industry in South Africa (Retirement Fund Manager, Old Mutual Employee Benefits) I saw it fit to engage on a follow up study that would involve more that just principal officers but trustees themselves in an endeavor to prove whether these trustees are aware of what is expected of them and whether they ascribe to the principle of good governance.

#### **1.4 VALUE OF THE RESEARCH.**

I think this research is invaluable to the retirement fund industry and indeed to my organization. Its contributions, however small, can help shape the future of trustees in the retirement fund arena in South Africa as it elicits the shortcomings of trustees in effectively discharging their fiduciary duties and this protecting themselves against unnecessary risks.

I also think that this survey can go long way in assisting to decipher the problems the trustees are faced with and environments in which they make all their all-important decisions regarding the members and pensioners monies. It could also help those who have embarked on trustees training programs in ascertaining the depth of what they have to deal with. I'm also one of the advocates of appropriate and continuous trustee training. I believe that trustees must have the necessary skills and relevant competence to carry out their tasks properly.

When acting in their capacity as fund trustees they should be aware that they are not to act as representatives of the groups or interests from which they are drawn. They must serve all classes of beneficiaries impartially. It is indeed conceivable that many people appointed as fund trustees could be in a position where they may have a conflict between their duties as trustees and their personal interests. Where this problem arises they should be guided by the cordial attributes of good governance, which encompasses discipline, responsibility, accountability, transparency, fairness and social responsibility.

Now, how can this paper positively contribute to all this? This study can help us (industry players) understand the complexities the trustees are faced with, what is it they are lacking in and then work towards remedial actions.

## **CHAPTER TWO.**

### **LITERATURE REVIEW.**

#### **2.1. A PERSPECTIVE ON RETIREMENT FUND GOVERNANCE.**

Retirement funds are by their nature subject to potential conflicts of interest arising amongst the stakeholders. They must, therefore, have an effective governance structure to ensure that they are managed in the best interests of the beneficiaries. Retirement fund governance has direct implications for retirement income, both in terms of its impact on administrative efficiency and on the investment strategies of the fund, since these two factors together determine the performance of retirement funds. In addition, pension fund governance affects the extent to which these institutional investors engage in shareholder activism, participating in the governance of the companies that they invest in.

Good retirement fund governance has gained momentum internationally and has become a necessity for every retirement fund. It is no longer restricted to the activities of just public listed companies in the advanced economies. This is especially so in the wake of incidents like the Maxwell scandal in the United Kingdom where the closed pension fund of the holding companies linked to the late Robert Maxwell was used to prop up the share price of insolvent companies that were part of this holding. The recent Enron debacle has highlighted the potential damage that malfunctioning corporate governance can inflict on retirement savings.

The complexity of governance is difficult to capture in a simple definition. The need for governance in any form of organization exists anytime a group of people comes together to accomplish a goal. It is generally agreed that the pivotal component of governance is decision-making.



According to Cadbury (1999) "Corporate governance is concerned with holding the balance between economic and social goals and between economic and social goals and between individuals and communal goals and the aim is to align as nearly as possible the interests of individuals, corporations and society"

Retirement funds are independent legal entities that are established and managed mainly for the purpose of providing retirement and other benefits to the members of a pension fund. They function on the basis of agency relationships between members and beneficiaries of the fund on one hand the board of trustees and the service providers on the other. The governance of funds consists of all the relationships between the different entities and persons involved in the functioning of the retirement fund. They are, therefore, subject to potential conflicts of interest arising amongst the parties involved in the management of the fund.

Retirement Fund Governance is a subset of corporate governance. It is the mirror image of the corporate governance of a company, which consists of the set of relationships between the company's management, board, shareholders and other stakeholders.

The same principles that apply to business assets in general also apply to the management of pension assets. The law does not require perfect decisions with respect to any business, including the operation of pension funds. It only requires reasonable decision-making processes.

Accordingly, a good pension management system requires effective processes that encourage sound decision-making, proper and timely execution, and regular review and assessment. In the broadest sense, the task of the governance of a pension fund can be conceived as a set of arrangements, including a well-defined legal and regulatory framework for the protection of the interests of members and beneficiaries of the fund.

The ideal system of governance would give all the parties involved in the operation an oversight of the pension fund the right incentives to act in the best interests of the pension fund members and beneficiaries. What constitutes good retirement fund governance will evolve with the changing circumstances of a fund and must be tailored by the Board of trustees to meet these circumstances.

Among the efforts at individual country level to develop pension governance guidelines, that by the Canadian Association of Pension Supervisory Authorities (CAPSA) may be mentioned. These guidelines provide a broad flexible outline of key pension fund governance principles set out under eleven principle headings. CAPSA defines retirement fund governance as "the structure and processes under which a pension plan is administered and monitored to ensure that fiduciary and other obligations with respect to the pension plan are fulfilled."

## **2.2. A SOUTH AFRICAN CONTEXT.**

Prior to 1994, members were excluded from the management of retirement funds. For many years, employees campaigned for inclusion in the boards of trustees responsible for managing pension and provident funds. In April 1996, the Pension Funds Act was amended to create the requirement that at least 50 % of the trustees were to be member trustees.

Most of the member trustees elected were laymen who lacked the necessary expertise for fund management. In contrast to this position, the skills of fund governance rested with the employer trustees. With the change in the composition of boards of management, trustee training is becoming more important. FSB guidance could be provided to ensure that there is adequate training.

Retirement Fund Governance in South Africa presently operates within the provisions of the PFA and related regulations and all other applicable legislation. The objectives of the Board of Trustees are defined in Section 7C and 7D of the PFA. These sections have been clarified and amplified with the release by the FSB of Pension Fund (PF) Circulars in particular PF 96, PF 98 and PF 108. The new section 13A and Regulation 33 of the PFA deal with the employer's liability to pay contributions to retirement fund within seven working days and provides for the appoint of a Monitoring Person to oversee the whole process.

All these pieces of legislation and Circulars read together provide guidance to Boards for the good governance of funds. It should be noted, however, that the Pension Fund circulars from the Registrar of Pension Funds and GN notes from SARS do not constitute law but merely represent best practices, or the Registrar's and SARS interpretations which, by agreement, are generally adhered to in the management and governance of funds by organized industry.

What is of particular note in the legislation mentioned above are:

**The emphasis on the fund rules.** One of the most important duties of the Board is to give effect to the rules of the fund insofar as these do not conflict with the law. The rules set out the objects of the fund and how these are to be attained. The board is bound by these rules, and may vary them only in accordance with the amendment provisions set out in the Act and rules.

In terms of section 7C(2)(a) of the Act, trustees should ensure that members are protected in terms of the rules of the fund and the provisions of the Act especially during amalgamations and transfers, splitting of a fund, termination or reduction of contributions of members and withdrawal of an employer who participates in a fund.

The Board should ensure that assets and contributions of the fund are invested in accordance with the rules of the fund. The Board should draw up a document setting out the investment policy for the fund, including delegation to investment managers and custodians, where required with the procedures necessary for monitoring investment performances and the appropriateness of investments to the provision of benefits in terms of the rules. The board should declare its voting policy with regard to investments held by the fund.

The Board should bear in mind that at all times it should act in the best interest of all fund members and that timeous, relevant and meaningful communication takes place with all members in a comprehensive manner to enable members to make balanced and informed decisions.

The Board must take all reasonable steps to ensure that contributions are paid timeously to the fund in accordance with Act. The Board is responsible for ensuring that contributions are paid into the fund in accordance with the Act. The employer is required to pay in full to the fund any contribution deducted from the member's remuneration and any contribution for which the employer is liable to pay in terms of the fund rules.

The Board must ensure that proper internal control systems are in place and that standards are set for the monitoring and reviewing of internal controls

The Board should ensure that an Audit Committee and Actuarial Committee are in place with the necessary terms of reference and reporting responsibility to those committees and the Board where relevant.

The Board has a duty to act diligently and with due care with regard to all actions between itself and its members. These concepts imply that board members should discharge those duties as can reasonably be expected from a prudent person.

Prudence requires the board not to assume risks without taking due account of the possible consequences. This includes maintaining adequate financial resources as well as maintaining effective risk management systems.

The move from defined benefit to defined contribution has brought about greater focus on investment performance. In the new defined contribution environment a member's retirement benefits are dependent on the returns from the retirement fund assets. Currently, Regulation 28 of the Pension Funds Act limits only how much a retirement fund can invest in each asset class.

There are no guidelines to assist trustees in their choice of asset classes. Moreover, new investment vehicles, such as structured products, are not specifically covered by the existing regulation. To guard against imprudent investment by the trustees, the regulations are being revised. The proposed revisions to Regulation 28 set out a process for trustees on how to invest funds assets.

This will make it easier for trustees to evaluate the performance of the funds investment advisers and that of its other service providers on the basis of what is best for members and to apply that same standard in evaluating any proposals for change in fund operations or expenses.

### 2.3. SOME INTERNATIONAL PERSPECTIVES

#### Canada

Until recently, little attention was paid to the performance of pension plans. It has only been over the last two or three decades that a number of pension plans have evolved into institutions with considerable influence in the capital markets. This, in turn, has drawn attention to the pension sector, as people increasingly asked questions about the relative performance of their pension plans. As their assets have increased, the importance of pension plans as institutional investors has grown thrusting them into the forefront in the debate on corporate governance in Canada. In exercising their fiduciary duty to the beneficiaries, pension plan managers have participated in the ongoing examination of corporate governance and its effect on shareholder value.

The Association of Canadian Pension Management, which represents some 400 organizations, surveyed its members in late 1999 about their governance practices and found that practices vary with plan size. Large plans are more sophisticated than small plans, for example. The survey shows smaller-to-midsize companies do need to pay more attention to their pension plans if effective governance is to be assured.

Except for the very large plans, training for pension fiduciaries appears to be an area in need of attention. However, a large proportion of mid-to-large size plans do choose pension committee members on the basis of relevant skills.

A large proportion of pension plans do not have a strategic plan for the pension plan. A relatively high proportion of plans have a structured approach for choosing and assessing investment managers. This is not the case, however, for plan actuaries, auditors or administrators. This may not be surprising, but it does identify an area for future improvement.”

The Association of Canadian Pension Management, The Pension Investment Association of Canada and the Office of the Superintendent of Financial Institutions of Canada, issued guidelines containing many common principles in November 1998. They formed a Joint Task Force on plan governance with a purpose to develop a common set of pension plan governance principles and a guide for plan administrators to conduct an assessment of their governance practices. The three primary objectives of the Task Force were:

- To develop a set of governance principles which can be adopted by all types and sizes of pension plans across Canada, and thereby increase the effectiveness of governance practices of pension plans and increase protection for plan beneficiaries;
- To develop a cost-effective self-assessment and reporting regime focused on high level issues rather than processes that will be flexible and applicable to all pension plans.
- To raise the level of understanding of plan administrators concerning their accountability for decisions and actions affecting the pension plan and the delivery of the pension benefits.

The Task Force recommended that every pension plan should have a clear mission as a starting point for proper plan governance. It would reflect the plan sponsors reason for establishing and maintaining the plan. The mission should be clearly distinct from the company's mission statement. The mission statement must address issues such as the pension entitlements and the funding policy.

Furthermore, a code of conduct, including conflict of interest policies and procedures covering benefits administration and funding, as well as investments should be clearly articulated and monitored. The plans trustees should measure performance, including administration and funding status as well as investments, against pre-defined goals, adjusted for differing needs over time.

Measuring performance facilitates the separation of the supervision of operations from their execution. Performance objectives and measures should be tailored to each plan's specific requirements. Results should be reported to the appropriate stakeholders.

In respect to the governing body of the plan, the trustees of the plan are legally the surrogate principals for the assets of the Fund. They should understand financial markets, risk management, actuarial principles, contractual documents and fiduciary duties.

### Australia.

In an increasingly competitive environment, the pressure is on superannuating funds to attain a five-star rating in terms of fund governance. The Association of Superannuating Funds of Australia ("AFSA") Best Practice Committee has developed a set of guidelines, set out below, aiming to assist trustees in identifying and addressing governance issues (Wyatt, 2000)

#### **Definition of Trustee roles and powers:**

A clear understanding of the role, responsibilities and powers of the trustee Board is essential to the effective operation of the Board. This should be clearly documented. Such a document should define the basis of the trustee boards' powers and responsibilities. It should include the primary source of the trustee board's power, the board delineation of functions and accountabilities between the trustee board and internal and external service providers, such as fund secretary administrators, investment managers and custodians.

#### **Board Mission:**

The mission statement should reflect the underlying purpose of any fund as a vehicle for retirement savings and ancillary purposes.

**Code of conduct:**

The Trustee Board should collectively agree on the values by which it will operate. A code of conduct assists in documenting these values. Generally these should include conflicts of interest, confidentiality and privacy, improper conduct, due care and diligence in decision- making, including access to independent advice and acting in the interest of the members.

**Monitoring the performance of the Board:**

Assessments of the performance of the Board as a whole should consider measures based on the mission statement and strategic objectives and the Board's own governance policy.

**Legal and compliance issues:**

Good governance implies the adoption of compliance with relevant rules and legislation as a basic value for trustees and their funds. Trustee Boards need to develop a compliance policy framework. This includes identifying all relevant legislative requirements with which the trustee and the fund are required to comply. It also includes recording and specifying who has primary responsibility for ensuring compliance with specific requirements.

**Investment Management:**

Good governance requirements for effective asset management include a clear view by the Trustee Board of its role in the investment process as well as investment objectives which take account of the needs and nature of members (and employers if it is a defined benefit fund) in terms of investment return and risk and are therefore integral to the fund's overall mission. In determining the investment objectives, trustee boards will need to address the performance benchmarks to be used to judge the performance of the fund.

A reporting structure should be in place allowing the Board to monitor the investment performance and review investment objectives and strategy at appropriate intervals.

**Risk Management:**

Assessment of relative risk and impact will allow the Trustee Board to ensure that risk management responses and procedures are developed commensurate with the potential impact of each identified risk area. Risk extends to all aspects of the Fund's operation.



### **Service Providers:**

A trustee Board needs to be set in place a monitoring process for each of its service providers, which should include regular reporting of performance against agreed standards.

## **2.4. GOVERNANCE AND COMPLIANCE.**

### **2.4.1. The Financial Services Board.**

The FSB acts in a supervisory and advisory capacity. It supervises activities that concern the exercise of control over the financial institutions and service providers that fall within the FSB's control. In addition, the FSB acts in an advisory capacity to the Minister of Finance. It exercises control over certain industries, inter alia, the retirement funds industry. It should be noted that the banking industry and mutual banks (banks effectively owned by the depositors) fall beyond the scope of the FSB. Currently, however, the introduction of a single regulator to oversee all financial and investment services (including banks) is under serious consideration as part of the general tightening of controls over the financial sector. Retirement Fund Governance and compliance therefore falls under the auspices of the Financial Services Board.

### **2.4.2. Governance and compliance.**

The legal framework in which retirement funds are required to operate has developed dramatically over the last few years. How does the management board of a retirement fund assess whether the fund is fully compliant and whether the principles of good governance are being adequately observed?

## **Compliance**

Retirement fund management boards trustees are responsible for identifying the legislative provisions applicable to the fund, conducting an audit of the fund and establishing where action needs to be taken. This should be a regular exercise undertaken by the fund to ensure that the fund is neither exposed to sanction by the regulatory authorities nor unnecessarily involved in complaints and litigation before the Adjudicator and the courts (Luyt and Roji, 2001)

Legislation establishes certain minimum requirements with which a Fund must comply. Failure to comply with such requirements could result in criminal prosecution in terms of section 37(1-5) of the PFA.

### **Section 37(1) of the PFA stipulates as follows:**

(1) Any person who-

- (a) Contravenes or fails to comply with the provisions of section 9,9a, 13A, 13B, 35;or
- (b) Fails to make a return or transmit or deposit a scheme, report, account,  
Statement or other document when required to do so in terms of this Act; or
- (c) Contravenes the provisions of section nineteen or any condition on which  
he has been exempted from those provisions; or
- (d) Fails or refuses to furnish information, or produce documents or accounts,  
or render other assistance to the registrar when called upon to do so in  
terms of this Act; or
- (e) After the expiration of a period of six months from the commencement of  
this Act; induces or attempts to induce any person to become a member  
of, or to contribute to a fund not registered under this Act; or

(f) Contravenes or fails to comply with the provisions of section 10,31 or 32A(2) or (4);  
shall be guilty of an offence.

The section further stipulates that any penalty shall be a debt due to the FSB and may be recovered by the registrar by action in any competent court. The adherence to the requirements of section 37(1) is clearly a legal compliance issue.

## **Governance**

Good governance extends beyond mere compliance with the letter of the law. It necessitates a system of operation based on the principles of good practice and proper conduct. Retirement fund management boards should apply the same principles in conducting the affairs of a fund as directors apply in conducting the affairs of a company.

However, unlike the shareholders in a company, members are beneficiaries as well stakeholders in the corporate entity. They are, moreover, bound to become members of the fund and to submit to its rules. And, they have no power to create their own protections by rule amendment or by recalling and dismissing the trustees. Members are in a relationship of dependency on the trustees such as entitles them to expect an exercise of power to their benefit by trustees.

Ultimately, governance and compliance efforts are designed to establish a culture within an organization that promotes prevention, detection and resolution of instances of conduct that do not conform to relevant legislation, industry rules and accepted market practice, as well as the industries ethical and business policies. This onerous task has been delegated to trustees.

The trustees' responsibility to members therefore, is to first ensure that the fund is running according to the principles of good governance.

There are general trends summed up as greater choice and control by members; greater transparency in communication to members and pensioners; and more regulation that have made trustees roles more onerous than ever that have highlighted the importance of good governance in the retirement fund industry. This means that concepts such as a clear definition of roles, performance monitoring, trustee training and risk management to name a few have been considered by the trustee board and appropriate strategies have been put into place.

According to the FSB (2000) the main principles of good corporate governance applicable to retirement funds are to:

- Exercise leadership, enterprise, integrity and judgment in directing the fund so as to achieve continuing prosperity and to act in the best interest of the fund in a manner based on transparency, accountability and responsibility.
- Monitor and evaluate the implementation of strategies and policies. Identify the key risk areas and key performance indicators and monitor these factors.
- Ensure that all technology and systems used in the fund are adequate to properly run its business.
- Ensure that members are communicated to effectively.
- Identify the risk areas and key performance indicators and monitor these factors.
- Regularly review processes and procedures to ensure the effectiveness of the fund's internal systems of control, so that its decision –making capability and the accuracy of its reporting and financial results are maintained at a high level at all times.

Trustee boards are responsible for identifying the legislative provisions applicable to funds thereby ensuring that funds are fully compliant, with the principles of good governance being adequately observed.

## **2.5 RETIREMENT FUND GOVERNANCE REGULATION.**

### **2.5.1 The Philosophy of Retirement Fund Governance Regulation.**

It is important to clarify the values, mission and philosophy surrounding retirement fund governance. In this respect, the role of the regulator and other stakeholders in the regulatory process and regime should be clarified too. The critical elements of the regulatory mechanism also need to be identified.

#### **The role of the regulator:**

- To ensure that input in respect of policy is provided for legislative measures so that emerging legislation and/or concerns are adequately and appropriately addressed;
- To establish and enforce standards and practices to enable the financial promises to members and beneficiaries to be fulfilled;
- To liaise with other regulators e.g. tax to agree actions and prevent overlap

The regulator should balance the needs of all the stakeholders in the formulation and implementation of policies.

#### **The need for enhanced regulation:**

The rationale for enhanced regulation is often questioned if the industry is reasonably healthy. This is especially so if the immediate benefits of such enhancement are not clear and if the costs, in this case, for the retirement funds will escalate significantly. Regulation does not guarantee supreme performance but seeks to create a favorable climate for sound governance.

### Regulatory style:

The aim of sound and effective governance in the Retirement Fund Industry is to bring together the objectives of all the stakeholders aiming for the financial security of the members and beneficiaries of the fund. It is important, therefore, that a consultative approach is taken in order to enhance regulation.

### 2.5.2. Retirement Fund Governance Regulation in the international context:

The Organization for Economic Co-operation and Development (OECD) has developed fifteen principles for the Regulation of Private Occupational Pensions Schemes. These are applicable in the South African context.

For sake of completeness, the fifteen principles are set out below:

- **Adequate regulatory framework:**

An adequate regulatory framework for private pensions should be enforced in a comprehensive, dynamic and flexible way (taking into account the complexity of the schemes) in order to ensure the protection of pension plan beneficiaries, the soundness of pension funds and the stability of the economy as a whole. This framework should, however, not provide excessive burden on pensions markets, institutions, or employers.

- **Appropriate regulation of financial markets:**

A productive, diversified investment of retirement savings which spreads risk requires well-functioning capital markets and financial institutions. The development of advance-funded pension systems should go hand- in- hand with a strengthening of the financial market infrastructure and regulatory framework (including the development of new financial instruments and new markets such as inflation-indexed markets and the improved functioning of retirement annuity markets).

**Non-discriminatory access should be granted to private pensions schemes:**

Regulation should aim at avoiding exclusions based on age, salary, gender, and period of service, terms of employment, part-time employment and civil status. It should also promote the protection of vested rights and proper entitlement process, as regard to contributions from both employees and employers. Policies for indexation should be encouraged. Portability of pensions rights is essential when professional mobility is promoted. Mechanisms for the protection of beneficiaries in case of early departure, especially when membership is not voluntary, should be encouraged.

**Adequacy of the private schemes:**

Proper assessment of adequacy of private schemes (risks, benefits, coverage) should be promoted, especially when these schemes play a public role, through substitution or substantial complementary function to public schemes and when they are mandatory. Adequacy should be evaluated taking into account the various sources of retirement.

**Regulatory system and separation:**

An institutional and functional system of adequate legal, accounting, technical, financial, and managerial criteria should apply to pension funds and plans, jointly or separately, but without excessive administrative burden. The pension fund must be legally separated from the sponsor (or at least such separation must be irrevocably guaranteed through appropriate mechanisms).

**Funding:**

Private schemes should be funded. While full funding exists in principle for defined contribution plans, other types of plans should be subject to minimum funding rules or mechanisms to ensure adequate funding of pension liabilities.

**Calculation techniques:**

Appropriate calculation methods for asset valuation and liabilities funding, including actuarial techniques must be set up and based on transparent and comparable standards. Increased reliance on modern and effective risk management, industry -wide risk management standards for pension funds and other institutions involved in the provision of retirement income should be promoted. The development of asset liability management techniques should be given proper consideration.

**Supervisory structures:**

Effective supervision of pension funds must be set-up and focus on legal compliance, financial control, actuarial examination and supervision of managers. Appropriate supervisory bodies, properly staffed and funded, should be established in order to conduct when relevant off and on site supervision, at least for some categories of funds and in particular when problems are reported.

**Self-Supervision:**

Self-regulation and self-regulation should be encouraged. The role of independent actuaries, custodian services and internal independent supervisory boards should be promoted within an appropriate regulatory framework.

**Fair competition:**

Regulation should promote a level playing field between the different operators and take account of the usefulness of a functional approach. The fair competition should benefit to the consumers and allow for the development of adequate private pensions markets.

**Investment:**

Investments by pension funds should be adequately regulated. This includes the need for an integrated assets/liabilities approach and the consideration of principles related to diversification.

**Insurance mechanisms:**

The need for insolvency insurance and/or other guarantee schemes has to be properly evaluated. These mechanisms may be recommended in some cases but in an adequate framework. Recourse to insurance mechanisms (group and reinsurance) may be promoted.

**Winding-up:**

Proper winding-up mechanisms should be put in place. Arrangements (including, where necessary, priority creditors' rights for pension funds) should be put in place to ensure that contributions owed to the fund by the employer are paid in the event of his insolvency.



### **Disclosure and education:**

Appropriate disclosure and education should be promoted as regards respective costs and benefits characteristics of pensions schemes, especially where individual choice is offered. Beneficiaries should be educated on misuse of retirement benefits especially lump sums.

### **Corporate Governance:**

The corporate governance role and capacity of pension funds should be considered. This includes: the role of guidelines (statutory or voluntary) for governance activities; the impact of shareholder activism by pension funds on corporate behaviour; and the governance of pension funds themselves and the role of trustees.

Stevenson (2001) believes that the above OECD principles can be applied broadly to two aspects of fund governance: **the governance structure and governance mechanisms.**

### **Governance structure.**

Retirement funds should recognize the importance of effective governance structures and processes. However, the general framework of retirement fund governance should be addressed with relevant legislation.

Governance regulations should cover aspects of the governance structure such as;

- The responsibilities of the Board of trustees, its accountability and responsibilities
- The extent of delegation required by the Board of trustees for duties such as investments management, benefit payments, auditing and actuarial analysis. The governing body should not absolve itself of this responsibility by delegating certain functions to external service providers like consultants and administrators.
- Should set out the general framework for the division of responsibilities and accountability. Responsibilities should be documented and be made available to members.

- Governance regulations should also define the general operational responsibilities of the Board;
  - Disclosure and access to information to members and beneficiaries.
  - The implementation, review and monitoring of risk.
  - The investment of pension fund assets in accordance with law and regulations.
  - Maintenance of an adequate level of funding.
  - Cost effectiveness of administration of the fund.

**governance mechanisms.**

The Board of trustees also has a responsibility to monitor and review governance mechanisms. The following cover aspects of governance mechanisms;

There should be appropriate controls in place to ensure that all persons and entities with operational and oversight responsibilities act in accordance with the objectives set out by the fund.

Reporting channels between all the persons and entities involved in the administration of the pension fund should be established in order to ensure the effective and timely transmission of relevant and accurate information.

Disclosure of information /communication to members on a timely and clear manner

Identification, monitoring and where necessary to address conflicts of interest

Performance assessments of trustees and service providers

Efficient communication channels within the fund

Redress mechanisms for members and beneficiaries.

governance regulations have not always been fully present in all countries. Most times, they have been reactive, introduced as a response to cases of misappropriation of pension assets. In the United Kingdom, for example, the decision to enhance the responsibility of trustees over pension fund management and to increase their independence vis-a-vis employers was mainly a response to the Maxwell scandal. During the 1990's, the pension fund of the Maxwell group lent big amounts to private companies owned by Maxwell. The fund managers under Maxwell's direction used collateral from these loans to prop up the share price of the ailing group and thus increased the fund's exposure to self-investments. When the group collapsed, a very large portion of the assets of the pension fund was lost. Consequent to this incident in the United Kingdom, the following were put in place as remedies.

- The 1995 Pensions Act in the United Kingdom introduced fines for breach of rules by pension fund trustees and eventual disqualification. The Act also emphasized the need for sound and effective governance standards;
- A self-investment limit of 5% was introduced and trustees were obliged to ensure such limits were adhered to;
- The Pensions Act introduced a requirement for less leverage by the employer over the trustees and better independent actuarial information for trustees.

Canada governments have been especially active in regulating the pension industry by including and then tightening the fiduciary standards of those managing pension assets. Canada had its own villain in the Dominion Stores case by the name of Conrad Black. Although there was pension fund legislation in Ontario province, it did not spell out in precise detail the fact that pension surplus was not a corporate asset and did not provide for mechanisms to keep the funds members fully informed of the status of their funds. Black unlawfully tried to take advantage of these regulatory gaps to secure the surplus as a corporate asset. The result was a wave of significant legislation reform in the area of pension benefits standards.

In the United States of America, the fiduciary standards introduced by the 1974 ERISA law were largely in response to various unhappy episodes of fraud in pension fund management and fund insolvency caused by the bankruptcy of the fund sponsor. ERISA introduced explicit governance requirements on pension fund management.

### 5.3. Retirement Fund regulation in the South African context.

an examination of the South African fund governance regulatory regime, we started from a position of strength where in 1956 South Africa was the first country in the world to have a Pension Funds Act. However, thereafter, pension funds were in many instances assumed to be an area intrinsically linked to the employer and in many instances, indeed, pension fund administration and decisions made on investments was left to the employer. This is something that the labor unions challenged vehemently, especially those under the COSATU banner.

Before 1994, members were excluded from the management of retirement funds. For many years, employees led by their representative unions campaigned for inclusion in the boards of trustees responsible for managing pension and provident funds. In April 1996, the Pension Funds Act was amended to create the requirement that at least 50 % of the trustees were to be member trustees.

Most of the member trustees elected were laymen who lacked the necessary expertise for fund management. In contrast to this position, the relative skills of fund governance rested with the employer trustees.

Retirement Fund Governance regulation in South Africa presently operates within the provisions of the Pension Funds Act (PFA) and related regulations and all other applicable legislation. The objectives of the Board of Trustees are defined in Section 7C and 7D of the PFA. These sections have been clarified and amplified with the release by the (Financial Services Board) FSB of Pension Fund (PF) Circulars in particular PF 96, PF 98 and PF 108. Section 13A and Regulation 33 of the PFA deal with the employer's liability to pay contributions to a retirement fund within seven working days and provides for the appointment of a Monitoring Person to oversee the contribution process.

When these pieces of legislation and Circulars read together provide guidance to Boards for the good governance of pension funds. It should be noted, however, that the Pension Fund circulars from the Registrar of Pension Funds and the SARS notes from SARS do not constitute law but merely represent best practices, or the Registrar's and SARS interpretations which, by agreement, are generally adhered to in the management and governance of funds by the organized industry ( Seletse, 2001)

Over the years, shortcomings as the ones set out below have been identified as generally being a reasonable description of the shortcomings in many retirement funds in South Africa;

- An unclear mission
- Persons taking on mixed roles such as simultaneous governance and executive
- Decisions taken at the wrong level
- Service providers having agent/principal conflicts
- Insufficient resources with respect to both time and skill
- Available time spent on the wrong activities
- Fraudulent activities.

#### **2.5.4. Retirement Fund Governance model**

The question may be posed as to what retirement fund governance model is appropriate to enhance the effective regulation of retirement funds. It is submitted that no single model can be identified as universally dominant and fund governance concerns must be addressed with reference to the specifics, the relationships and the operations that characterize a particular fund.

Urwin et al (2001) indicate that contemporary governance models usually include inter alia

- A mission statement.
- A separation of governance/executive/operations.
- Clear and not overlapping responsibilities and accountabilities.
- Acknowledgement that sufficient skilled resources must be acquired.
- Tasks that are delegated to the most capable people.
- Transparency.

The mission statement establishes the essential purpose of the fund. The functional roles and duties of the Board of the fund should be defined. In general, it is good governance for the governing body to have only strategic and monitoring responsibilities. This governance function includes monitoring compliance with all regulatory requirements.

Operational tasks would be handed over to an executive or a subcommittee, which would deal with the ongoing and delegated implementation of the trustee's responsibilities. This would fall under the principal officers scope. The operation function deals with the daily operations of the fund and this area would logically fall under the Principal Officer and the service providers.

## **2.6.PENSION FUND GOVERNANCE REVIEWS**

In several countries, like Canada, regulatory bodies have formulated regulation against which self-assessments and reviews are conducted. These serve to point to areas where greater or less attention is called for. Governance reviews are a good self-assessment tool. They provide assurance those adequate controls exist; that reported pension information is reliable and that the fund has complied with legislation, internal control policies and procedures and filed documents.

Although there are different types of reviews with different objectives, all retirement fund governance audits are carried out to ensure that certain pension-related functions are being carried out properly. Even where trustees have delegated responsibilities to others, they remain responsible for ensuring proper decision-making processes and overseeing its delegates.

Fund governance reviews can be either general or specific. General audits are broad in scope but usually limited in depth. Specific audits are generally narrow in scope but examine a particular area or areas in more detail. General reviews are a good starting point for evaluating a fund's governance readiness. Special reviews focus on a particular aspect of retirement fund governance especially where a general audit reveals specific problems. Ongoing review of the governance procedures will show the Board of the fund how effectively it is managing the assets of the fund. Reviews must generally be repeated at reasonable intervals to ensure that inconsistencies that develop are revealed and rectified.

Board members will often be involved and other fund personnel can conduct a review without the aid of external consultants. For instance, CAPSA has prepared the pension Plan Governance Self-Assessment Questionnaire.

The aim is to enable pension fund trustees to assess how successfully they have followed effective governance principles such as fiduciary responsibility, roles and responsibilities, risk management, oversight and compliance, transparency and accountability. However, funds would be encouraged to use external consultants because reviews require a wide range of expertise, such as legal, actuarial, audit, administration and in-depth pension knowledge and using independent parties can add greater assurance to those requesting the reviews.

**AN EXAMPLE OF GENERAL PURPOSE AND SPECIAL PURPOSE RETIREMENT FUND REVIEWS** (Extracted from the Canadian Association of Pension Supervisory Authorities, 2003)

<p><b>GENERAL PURPOSE REVIEW</b></p> <p><b>General Governance Review</b></p> <p><b>General</b></p>	<p><b>Objective:</b></p> <p>To assure the Board of trustees that:</p> <ul style="list-style-type: none"> <li>□ Those who have been assigned key pension responsibilities have requisite skill, knowledge and experience</li> <li>□ Pension responsibilities have been delegated to the right level within and outside the organization and that the mandates are clearly articulated.</li> <li>□ Those with pension responsibilities receive information that is timely accurate and complete</li> <li>□ Performance is regularly reviewed</li> <li>□ The current governance structure is appropriate</li> <li>□ Existing performance standards are adequate</li> </ul> <p><b>Objective:</b></p>	<p>Involves a review of key documentation and interviews with relevant personnel</p> <p>29/...</p>
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<p><b>Governance Review (Compliance)</b></p>	<p>□ To assure the Board of trustees that processes are adequate to ensure that the fund complies with;</p> <p><b>Legislation</b></p> <p>Regulatory guidelines timely filing of documents with regulator.</p>	<p>Involves a review of key documentation and interviews with relevant personnel.</p>
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**2.7. Future Movements.**

**Regulation 28**

The proposed revisions to Regulation 28 place even more responsibility on the trustees' shoulders by requiring that they follow a 6-step process in deciding how to invest the fund's assets. This process replaces the limits set by the existing Prudential Investment Guidelines.

**Investment Strategy**

Trustees will be required to develop an investment strategy specifically geared to meet the needs of the fund. The strategy developed must address the investment objectives of the fund, which need to be clearly defined and which must take into account the risks critical to the fund.



In developing the strategy, trustees will be required to consult experts with sufficient skills and experience to advise them, e.g. an actuary and an investment advisor. An asset manager cannot give advice on the investment strategy. The strategy must set out the percentages of the fund assets that may be invested in various asset classes as well as the range of discretion given to asset managers.

## **Investments**

The investment objectives must take into account the following issues:

### **Diversification of investments**

There is a great deal of truth in the old adage that you should never place all your eggs in one basket. Diversification is achieved by investing in a balanced portfolio of asset classes (shares, bonds, property, cash and international assets). The risk of poor returns is diversified against:

- Any one asset class performing badly
- Currency fluctuations
- Markets under-performing
- Industries under-performing

### **Volatility of returns**

For defined contribution funds directly invested in a market-linked portfolio, a significant fall in asset values could mean that members' benefits are significantly reduced. For defined benefit funds, the volatility of the market will result in an unstable contribution rate for the employer.

Trustees must consider how they will deal with volatility of returns if they are invested directly in the market. They could for example agree to follow a certain policy to smooth returns.

### **Real returns**

Fund assets must earn returns in excess of inflation to provide reasonable retirement benefits.

### **Assets failure**

If the fund is invested in the sponsoring employer, members face a double risk. If the employer folds, the members lose not only their jobs, but their retirement benefits too.

### **Liquidity**

Liquidity is the ability to convert assets easily and rapidly into cash without substantial loss of value. A lack of liquidity restricts a fund's ability to make the most of investment opportunities, and payment of benefits and expenses may force the realization of illiquid assets when the markets are depressed.

### **Preservation of capital**

The Trustees must consider preserving capital for members who are near retirement. Also, in cases where companies are restructuring and employees may be retrenched, it is important that the capital be preserved so that the retirement benefits will not be subjected to the volatility of the market.

### **Asset Managers' Selection**

In selecting asset managers, assess how the investment house rates on the following:

- Financial strength and reputation
- Track record
- Experience in managing in line with the mandate
- Style and philosophy

### **Performance Monitoring**

Performance of the asset manager has to be monitored on a regular basis as stipulated in the strategy. Risk and returns must be measured against specified benchmarks. If the asset managers underperform against the benchmark, the board of trustees must take appropriate action, as stipulated in the strategy document.

## Communication

The board of trustees must supply members with an easy-to-understand summary of the investment strategy. Where the fund offers member level investment choice, trustees are responsible for educating members about the choices available to them. The investment products offered to members must suit the risk profiles and ages of the members. For those members who do not exercise a choice, trustees must establish a default option that takes into account factors such as the age of the member.

## Review

The investment strategy must be reviewed at least annually or whenever there is a material change to the fund. Changes that require the investment strategy to be revised include:

- Changes in the market value of the fund
- Changes in the age profile of the members
- Changes in legislation
- Changes in benefits
- Large transfers and large-scale retrenchments.

Trustees will have to properly document their decisions on each of the investment process stages in an investment strategy document. The investment strategy document also lists the names and responsibilities of the various role players, helping trustees to understand their own responsibilities and the degree to which the other role players effectively fulfill their duties. Documenting investment decisions means fund information can be passed easily to new trustees, thus ensuring continuity.

Funds will be required to appoint compliance officer. This may be an official of the fund, such as the principal officer, or the fund auditor, or an official working for the administrator of the fund, or the consultant to the fund. The compliance officer must report annually to the Registrar of pension funds that:

- The investments are being managed according to the strategy
- The strategy has been reviewed with the fund's professional advisers, including the actuary.

## **Unclaimed Benefits**

There is very grave concern about unclaimed monies in retirement funds where beneficiaries are untraceable. The FSB regards an unclaimed benefit as:

- A benefit that remained unpaid for 12 months after it has become due; or
- The trustees have taken all reasonable steps to ensure that the benefit was paid and the fund was unsuccessful in efforts to trace the member or beneficiaries.

The FSB under cover of a letter dated 21 July 2000 requested funds and administrators to furnish information on unclaimed benefits held in funds and how they were being dealt with. The purpose was to gain information about the size of the problem in the industry so that an appropriate case could be made to the policy Board. Of the 16 000 funds the letter was sent to, only 800 responded.

An industry / FSB committee met in September 2000 to discuss guidelines for funds to trace such beneficiaries. There is an initiative by the FSB to establish a central database of information on unclaimed benefits and house such benefits in the retirement funds. In the context of establishment of such a database, it would be mandatory for all funds to furnish information on unclaimed benefits. The Regulations to the Pension Funds Act would be amended to include a provision dealing with this. In addition, a PF Circular would expand on the issues, such as retaining information of unclaimed benefits on transfer from one fund to another.

The database system would be funded by, *inter alia*, levies payable by funds that have unclaimed benefits. This would encourage funds to ensure that unclaimed situation is avoided or reduced. Certain unclaimed benefits may have prescribed in terms of rules of funds; this would therefore not form part of an unclaimed benefit. The FSB has indicated that it would favour prescription of unclaimed benefits only after thirty years.

Proper records and notice to members of unclaimed benefits should be required of funds. Because of the possible onerous ness of the administration, a suggestion has also been made that an industry-wide unclaimed benefit fund could be established to which retirement funds could transfer benefits that have been unclaimed.

It is clear that whether or not unclaimed benefits funds are to be established, the fund should itself set up separate accounts to hold unclaimed retirement or withdrawal benefits for at least three years before allowing them to be absorbed into the general assets of the fund.

A process for dealing with such accounts will involve at least the following elements-

- A fund rule dealing with unclaimed benefits. If the treatment of unclaimed is presently not adequate, a trustee resolution and a rule amendment may be necessary to rectify the matter.
- A procedure involving the following:
  - Adequate disclosure of benefits due;
  - Entry of unclaimed benefits on a register after a certain period;
  - Communication to members on unclaimed benefits;
  - Mechanisms for tracing missing beneficiaries and means for paying for these mechanisms, which may include charges against the special accounts;
  - Deletion from the unclaimed benefit register on satisfaction of the claim or prescription.
  - Monitoring the legislative environment for changes to laws dealing with unclaimed benefits.

### **Section 37C**

This section was introduced to ensure that death benefits were properly paid to dependents and non-dependent nominees of deceased members. With the introduction of the definition of dependant in section 1 of the Act, section 37C has created many uncertainties. As the FSB wants to revisit section 37C, the IRF and Life's' Association held workshops to obtain inputs and proposals from interested parties which will be submitted to the FSB for consideration.

## CHAPTER THREE

### METHODOLOGY

The method chapter of this dissertation is divided into the following subsections:

**Sample description:** This subsection looks at the sampling design, the way the sample was drawn, and the makeup of the participants.

**Instrumentation/Research tools:** This subsection describes the tools I used to collect data for this dissertation.

**Procedures used:** Here I provide a detailed description of the steps I took to contact the trustees (participants), obtain their cooperation and finally how I administered the instruments.

**Data analysis:** I describe the statistical technique I used to manipulate the collected data in this subsection.

#### 3.1. Sample description.

The participants in this study are all member elected and employer appointed trustees. I randomly selected this sample but mostly using my colleagues for referrals.

I therefore used simple random sampling design for this study. Although I did not purposefully aim so, I ended up with responses from defined contribution (DC) funds. However, I must also point out that that does not have any significance on the outcome of the study.

I sent my questionnaires to the fund trustees countrywide via the mail to 400 trustees. However, I personally visited the local trustees (Port Elizabeth area) and personally interviewed them receiving about 87 responses from them.

The survey deliberately excluded principal officers and focused only on both company and member trustees, as this would elicit responses from the actual people who are supposed to be making the decisions.

The survey itself was conducted from October 2003 to January 2004 and it reflects responses from 214 trustees taken from a wide range of industries sectors. The funds surveyed are not necessarily Old Mutual clients.

### **3.2. Instrumentation/Research tools.**

The instruments that I used for this study are face-to-face and telephone interviews as well as mail surveys administering questionnaires with fixed response questions. (See appendix)

### **3.3. Procedures used.**

I mailed the letters to the randomly selected 400 participants (trustees) in the last week of October 2003. Most of them had already been made aware of the coming questionnaires by their consultants, as I had asked my colleagues to do so. However, for the non-Old Mutual clients, I used a telephone instead of a pre-contact letter.

I made my follow-up calls on the last week of November after receiving just 10% responses.

Most of the responses came through in January, which is also the period I vigorously went out to do the face-to-face interviews locally (Port Elizabeth).

#### **3.4. Data Analysis.**

I used a spreadsheet based software program called STATISTICA 6 to analyze the data and produce the charts, graphs and tables.



## CHAPTER FOUR.

### REPORT ON FINDINGS.1

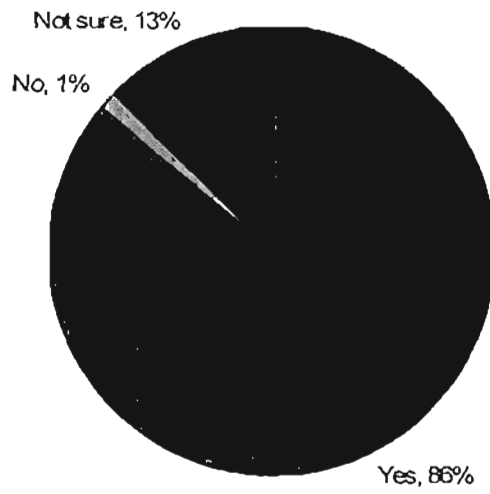
#### 4.1.FUND ADMINISTRATION.

Good governance procedures suggest that the administrator's performance should be monitored periodically against a predetermined and agreed set of criteria.

It is common practice to detail these criteria in a service level agreement. I therefore included in my questionnaire some questions to determine whether formal service level agreements were in place and how frequently the administrator's performance was monitored.

As shown in the Pie Chart, 86% of the respondents said their funds do have formal service level agreements in place while 13% said they were not sure and only 1% said their funds do not have such agreements.

Pie Chart

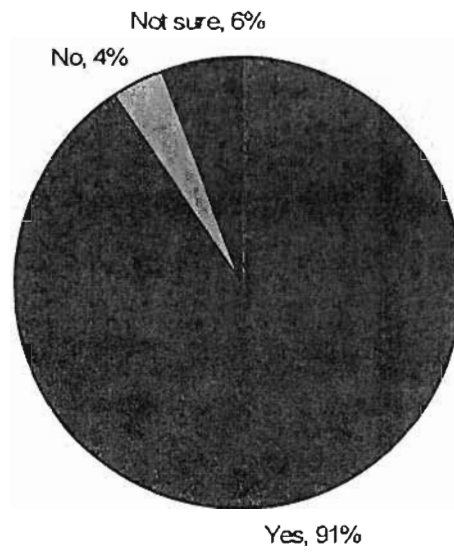


Ques1

Fig 1.

Question two asked the respondents if the administrator's performance was monitored on a periodic basis against predetermined and agreed set of criteria. The following Pie Chart depicts the respondent's responses.

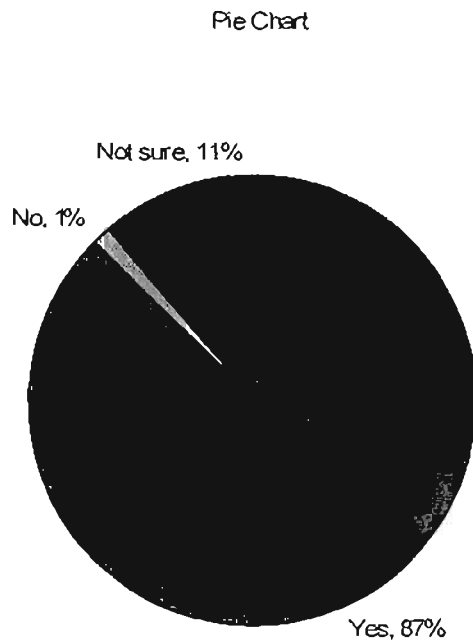
Pie Chart



Ques2

Fig. 2

The FSB prescribes that the Fund's financial statements be submitted to it within six of being issued. The responses depicted below indicate that the majority of funds are meeting the six-month dead line for the submission of annual financial statements.



Ques3

Fig 3

One of the requirements of the Pension Funds Act is that adequate indemnity and professional negligence cover should be maintained by the fund's administrator. The purpose of this cover is to ensure that any losses incurred directly as a result of mal-administration are adequately covered. Furthermore, trustees are expected to attest in the trustees' report in the annual financial statements that they are satisfied with the extent of the administrator's cover.

This survey enquired as to the extent of the cover taken out by the administrator and whether or not respondents considered this to be adequate.

The responses to this particular question were quite disappointing. Only 4% of the respondents provided answers with 47% not sure and 48% of the responses missing.

Frequency table: Ques4				
Category	Count	Cumulative Count	Percent	Cumulative Percent
100	9	9	4.20561	4.2056
Not sure	101	110	47.19626	51.4019
Missing	104	214	48.59813	100.0000

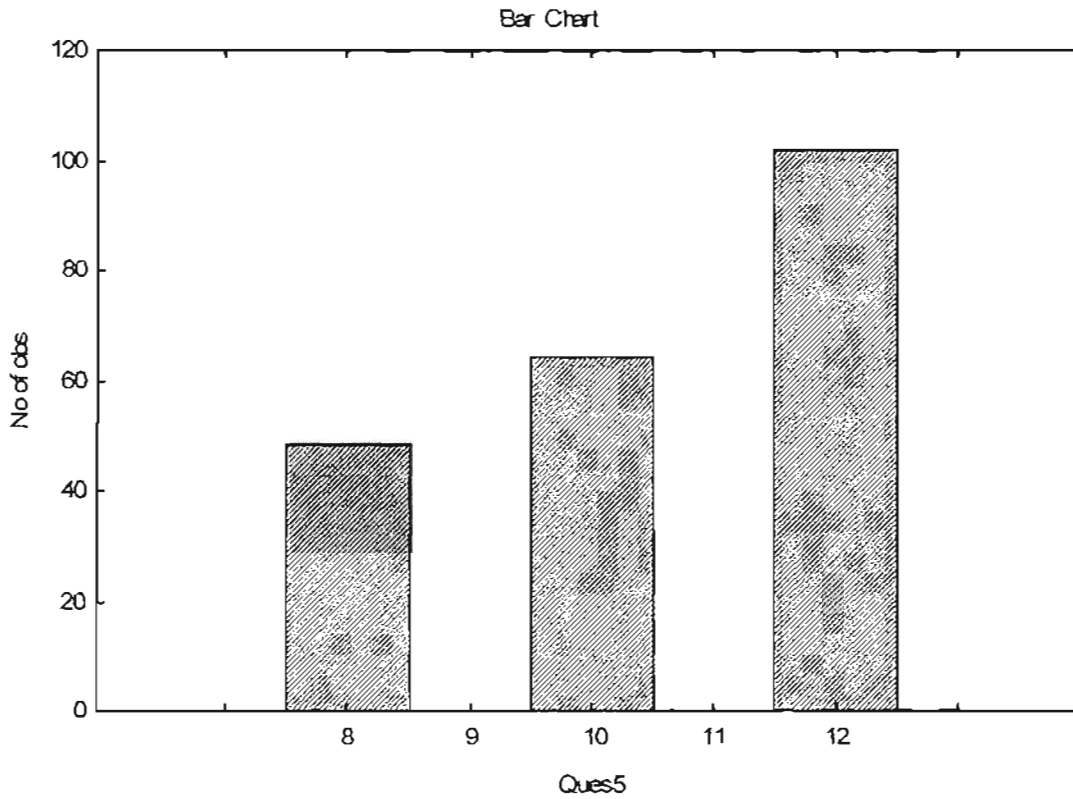
Table 1.

#### 4.2. THE BOARD OF TRUSTEES

The survey set out to gather information on the size of the boards of trustees to see:

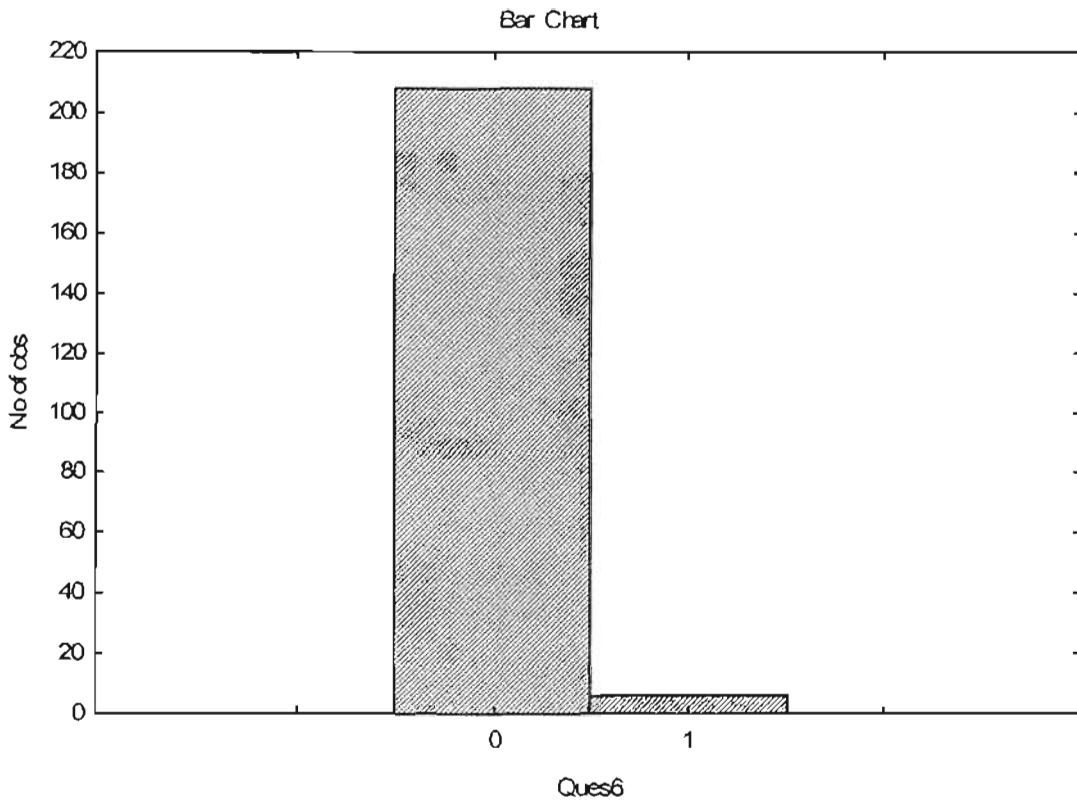
- Whether the FSB's guidelines on equal representation of member elected and employer appointed trustees were adhered to.
- The extent of independent trustee representation.
- Whether the chairperson of the fund is elected by the trustees or appointed by the employer
- The number of trustee meetings held per annum
- Whether formal training is provided to trustees
- Whether the fund has formally documented code of ethics
- Are identified risks addressed
- Whether the fund has a trustee fidelity cover.

In almost all instances the composition of the board of trustees complied with the FSB's guidelines.



**Graph.1**

On the question of independent trustees, our funds are still not complying with the FSB's guideline of appointing at least one independent trustee. The following Bar Chart and Frequency table depict that, with an overwhelming majority of 97% indicating zero independent trustees appointed to the fund boards.



**Graph.2**

Frequency table: Ques6				
Category	Count	Cumulative Count	Percent	Cumulative Percent
0	208	208	97.19626	97.1963
1	6	214	2.80374	100.0000
Missing	0	214	0.00000	100.0000

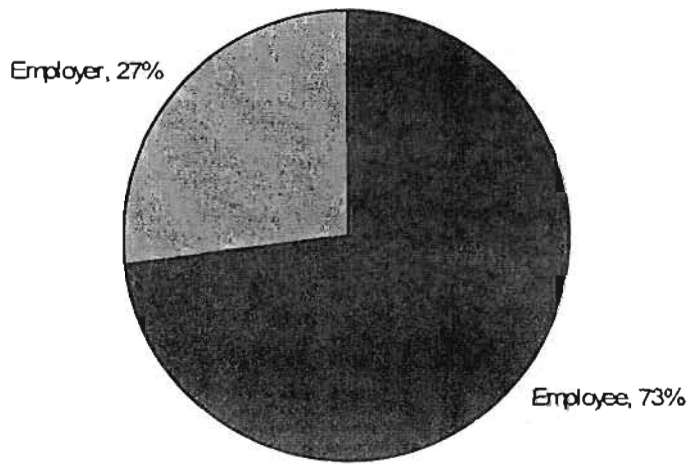
**Table.2**

The next question deals with the origin of the chairperson. The origin of the chair of the fund may indicate the extent of employer influence on the fund or the extent of the fund's independence.

As we would appreciate, prior to 1994 the employees had no representation whatsoever in the trustee board, and subsequent years have shown this changing with this role alternating between employer and employee trustees.

However, as the bar chart and frequency table below show the majority of the responses indicated the majority of funds chaired by employee elected trustees.

Pie Chart



Ques7

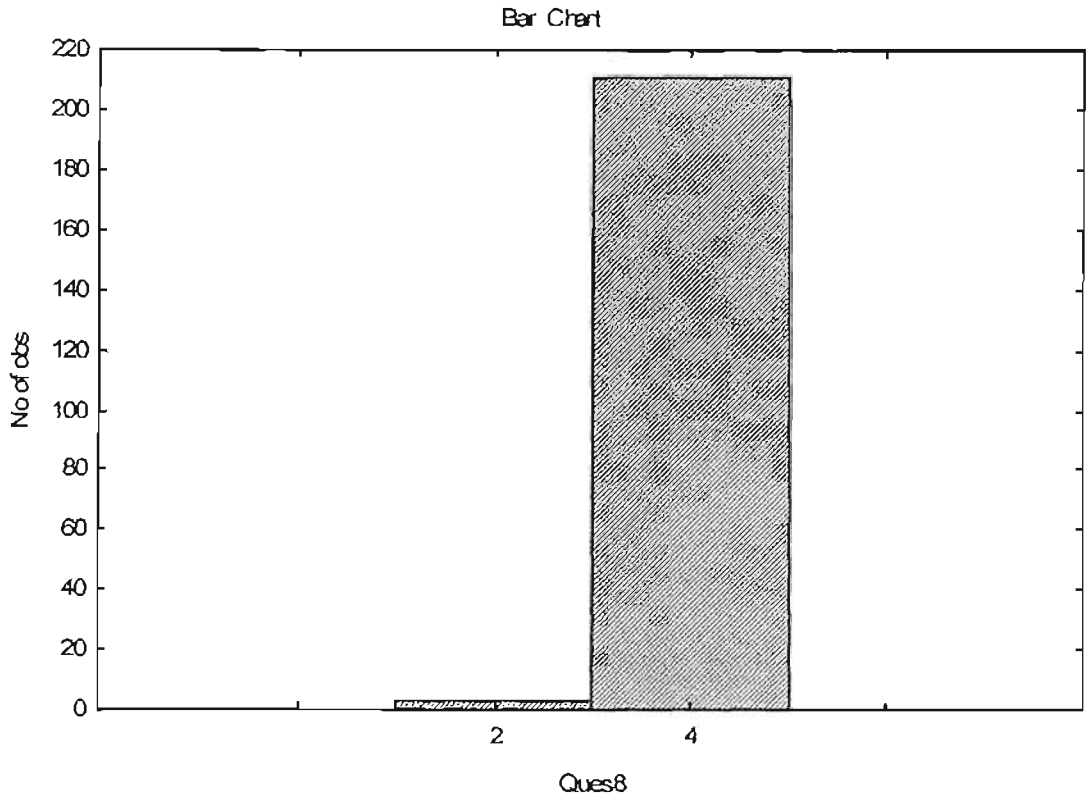
Fig.4

Frequency table: Ques7				
Category	Count	Cumulative Count	Percent	Cumulative Percent
Employee	156	156	72.89720	72.8972
Employer	58	214	27.10280	100.0000
Missing	0	214	0.00000	100.0000

Table. 3

Guidance from FSB suggests that funds trustees should sit at least on a quarterly basis. Almost all the surveyed funds do comply with this guideline as depicted by the Bar Chart and the frequency table below.





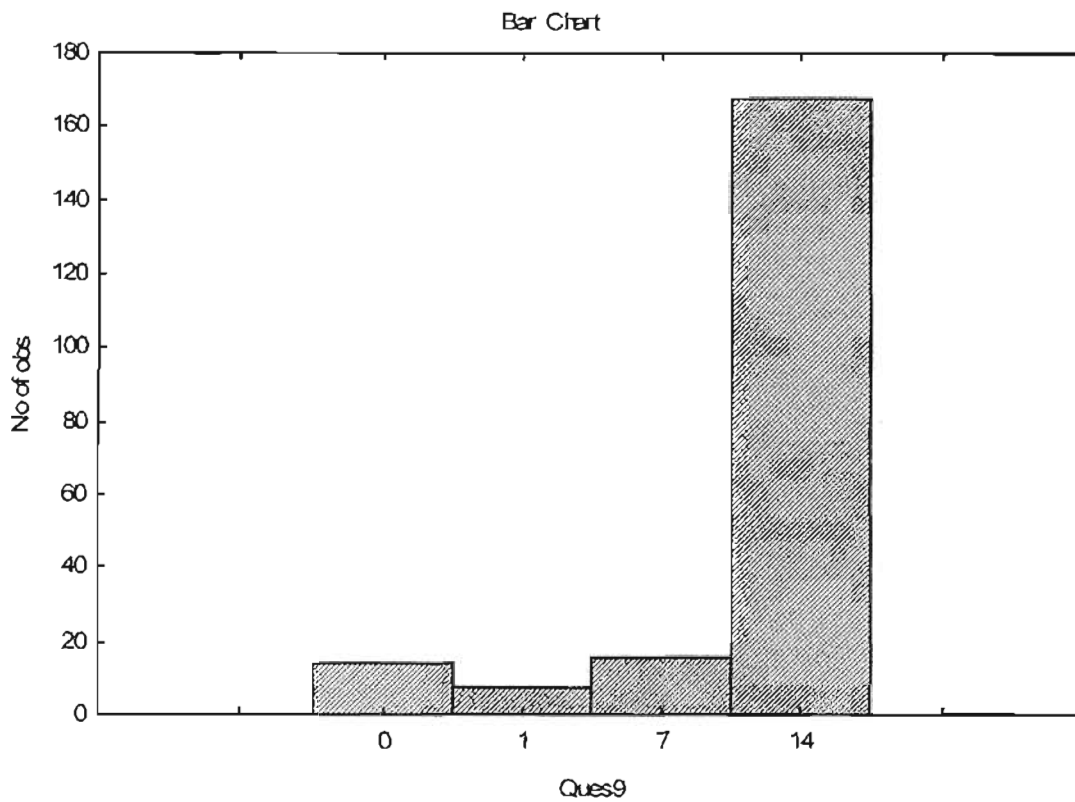
**Graph.3**

Frequency table: Ques8				
Category	Count	Cumulative Count	Percent	Cumulative Percent
2	3	3	1.40187	1.4019
4	211	214	98.59813	100.0000
Missing	0	214	0.00000	100.0000

**Table.4**

ufficient period for the circulation of board papers prior to trustee meetings should be provided so that trustees come to meetings prepared to avoid dragging the meetings and for their effectiveness.

enerally our funds do adhere to this principle as shown below. A majority of 78% circulates board papers 4 days prior to meetings. Only 3% are inefficient enough to circulate board papers a day before the meeting and 6% missing.



**Graph.4**

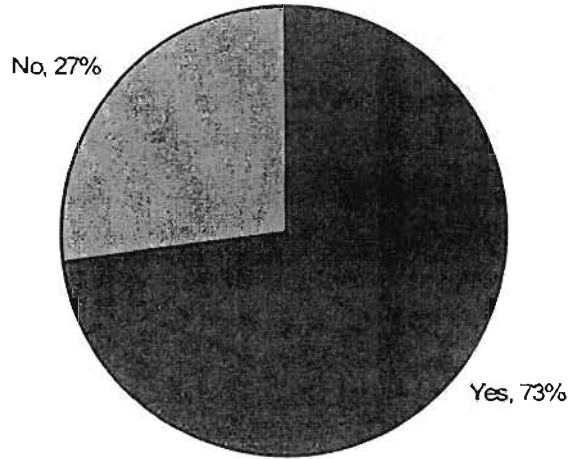
Frequency table: Ques9				
Category	Count	Cumulative Count	Percent	Cumulative Percent
0	14	14	6.54206	6.5421
1	7	21	3.27103	9.8131
7	16	37	7.47664	17.2897
14	168	205	78.50467	95.7944
Missing	9	214	4.20561	100.0000

**Table.5**

With sweeping changes in legislation requiring equal representation of employer appointed and member elected trustees on boards, trustee training assumes greater significance. My survey set out to ascertain whether trustee training is formalized to ensure that trustees are adequately equipped to discharge their onerous duties effectively.

73% of the surveyed funds indicated that their funds did not provide formal trustee training while 27% said they did.

Pie Chart



Ques10

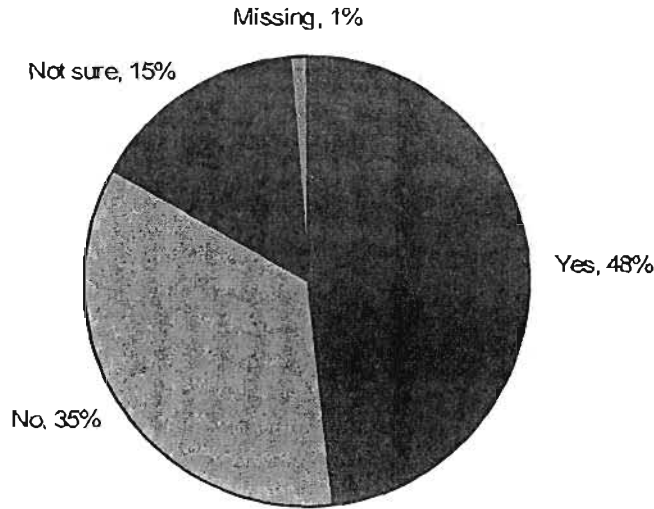
Fig.5

Frequency table: Ques10				
Category	Count	Cumulative Count	Percent	Cumulative Percent
Yes	156	156	72.89720	72.8972
No	58	214	27.10280	100.0000
Missing	0	214	0.00000	100.0000

Table.6

Of the 214 surveyed funds 103 indicated that they had a formally documented code of ethics, 75 indicating that they do not have and 33 not sure and 3 missing responses.

Pie Chart



Ques11

Fig.6

Frequency table: Ques11				
Category	Count	Cumulative Count	Percent	Cumulative Percent
Yes	103	103	48.13084	48.1308
No	75	178	35.04673	83.1776
Not sure	33	211	15.42056	98.5981
Missing	3	214	1.40187	100.0000

Table.7

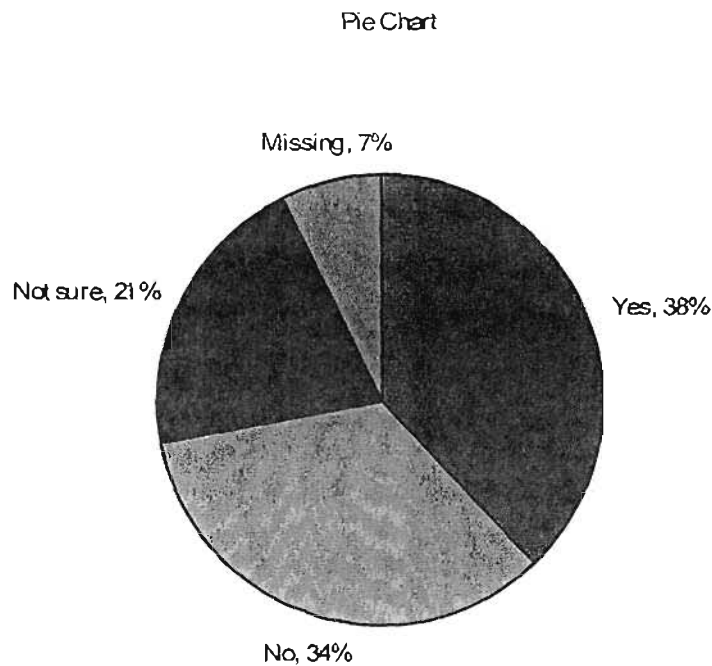
There are serious risks that face retirement's funds from time to time and it is of paramount importance that trustees address them timeously.

The following are a few examples of risks that funds are faces with from time to time:

- Poor investment performance and market volatility.
- Administrator's systems and administration problems.
- Poor governance and its consequences
- Lack of investment related experience by trustees and the consequent over reliance on consultants/advisors.



The survey briefly asked the respondents whether identified risks were being addressed. 37% answered positively, 34% negatively, 20% were not sure and 7% did not answer the question.



Ques12

Fig.7

Frequency table: Ques12				
Category	Count	Cumulative Count	Percent	Cumulative Percent
Yes	81	81	37.85047	37.8505
No	73	154	34.11215	71.9626
Not sure	44	198	20.56075	92.5234
Missing	16	214	7.47664	100.0000

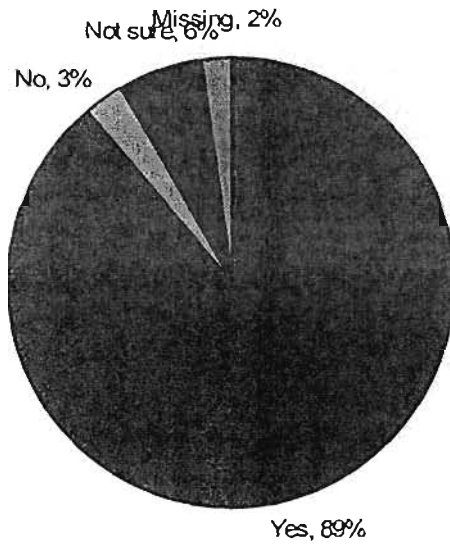
Table.8

Question et out to ascertain whether the funds have a fidelity cover for trustees as provided by legislation 89% of the funds indicated that they do have the all-important cover, only 3% said no, 6% were not sure while 2% did not answer.

51/...

096084

Pie Chart



Ques13

Fig.8

Frequency table: Ques13				
Category	Count	Cumulative Count	Percent	Cumulative Percent
Yes	190	190	88.78505	88.7850
No	6	196	2.80374	91.5888
Not sure	13	209	6.07477	97.6636
Missing	5	214	2.33645	100.0000

Table.9

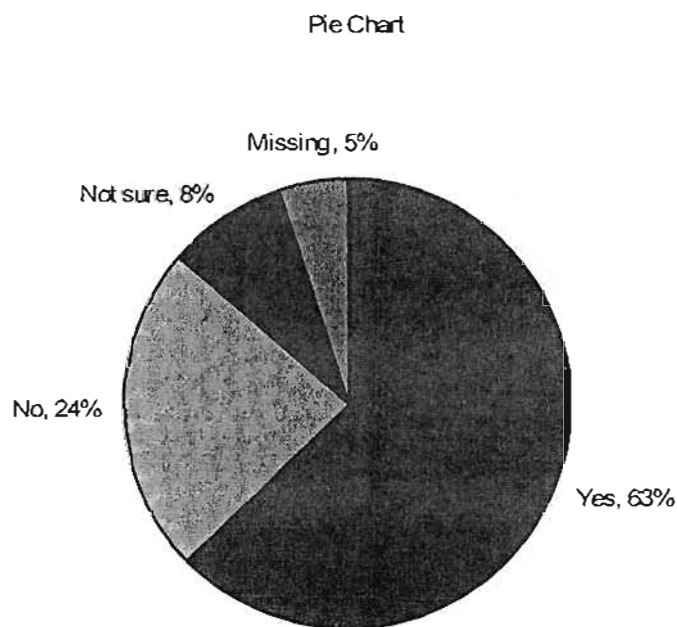
### 4.3.LEGAL COMPLIANCE

Trustees are required to understand and appreciate their fund's rules in order for them to make informed day-to-day decisions concerning members' benefits.

The survey set out to ascertain whether indeed trustees understand these rules.

The responses were encouraging as opposed to the general perception by industry players that trustees do not care about these rules.

63% indicated that they understand these rules, 24% said they do not understand them, 8% were not sure while 5% did not respond.



Ques14

Fig-9

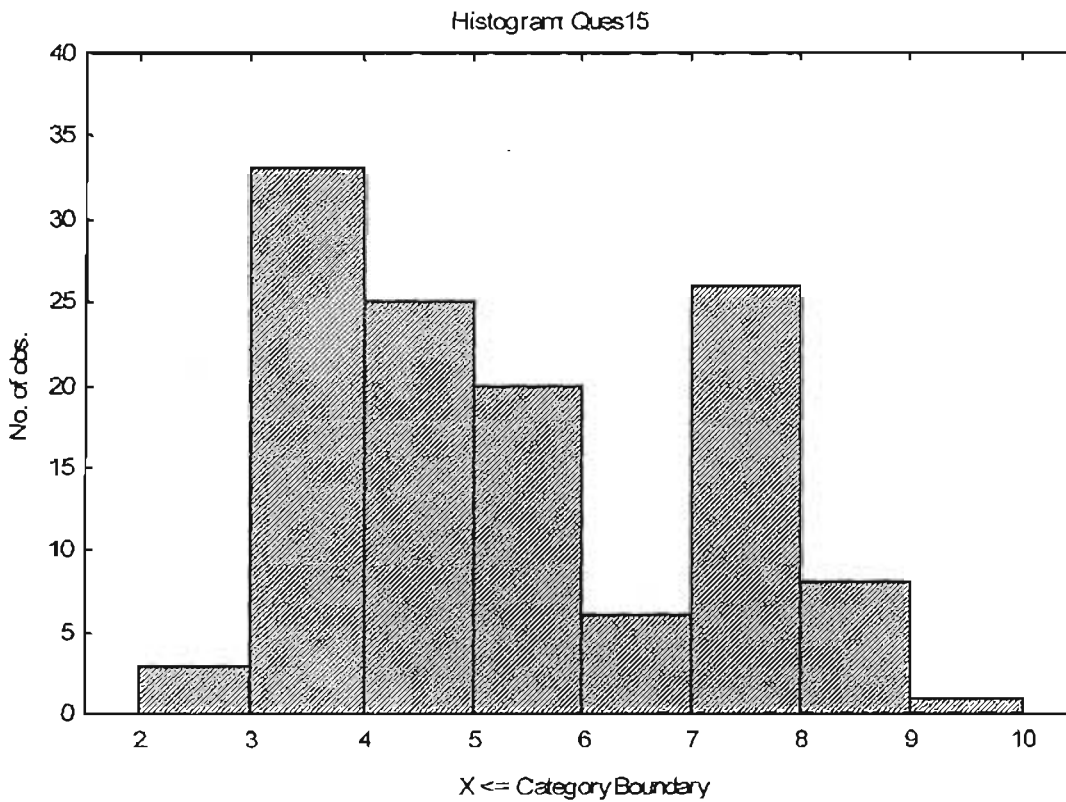
Frequency table: Ques14				
Category	Count	Cumulative Count	Percent	Cumulative Percent
Yes	134	134	62.61682	62.6168
No	51	185	23.83178	86.4486
Not sure	18	203	8.41121	94.8598
Missing	11	214	5.14019	100.0000

**Table.10**

Respondents were asked to rate their fund's regulatory compliance on a scale of 1-10. The average response on this rating was 5.88 with 16% rating their compliance below the average of 5%

Variable	Descriptive Statistics				
	Valid N	Mean	Minimum	Maximum	Std.Dev.
Ques15	122	5.885246	3.000000	10.00000	1.773062

**Table.11**



**Graph.5**



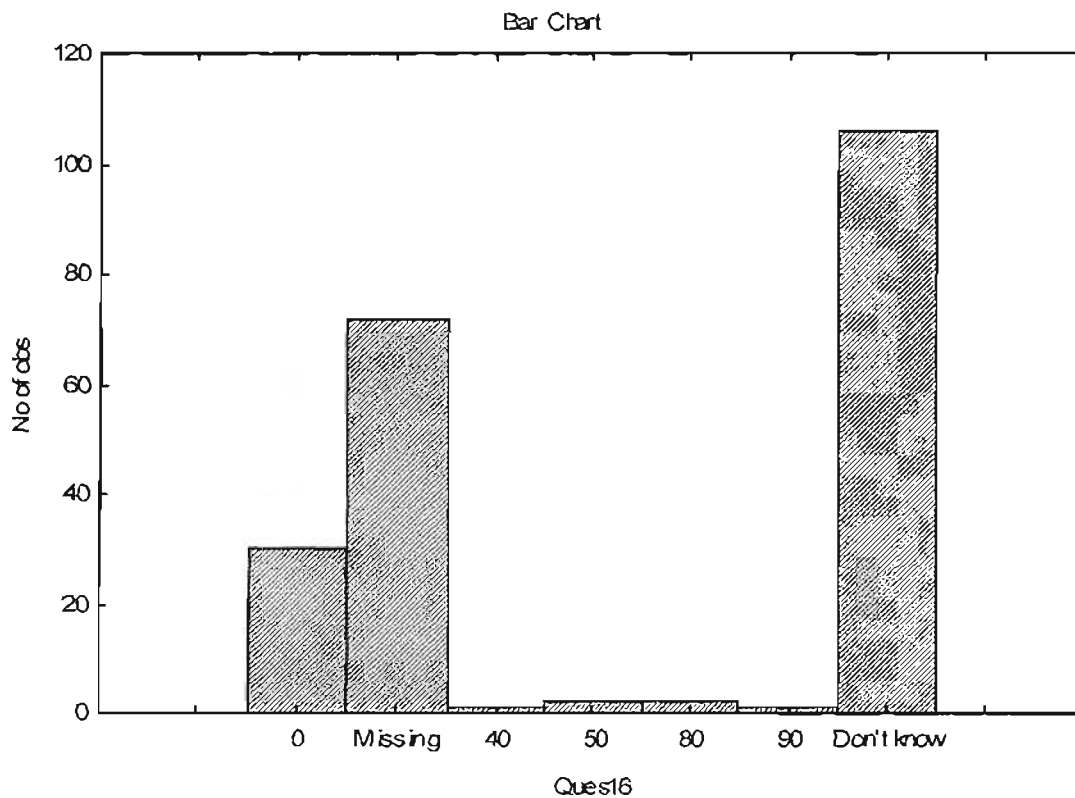
Frequency table: Ques15				
Category	Count	Cumulative Count	Percent	Cumulative Percent
3	3	3	1.40187	1.4019
4	33	36	15.42056	16.8224
5	25	61	11.68224	28.5047
6	20	81	9.34579	37.8505
7	6	87	2.80374	40.6542
8	26	113	12.14953	52.8037
9	8	121	3.73832	56.5421
10	1	122	0.46729	57.0093
Missing	92	214	42.99065	100.0000

Table.12

The FSB has put a lot of emphasis on the compliance issue of funds operating in terms of rules and rule amendments that is has approved (Section 13A). The adjudicator has even indicated that he intends to apply the approved rules of the fund in assessing cases going forward.

My survey question on the above yielded the following results.

49% did not know, 14% indicated zero, 33% did not provide responses and others shared the remaining 4%.

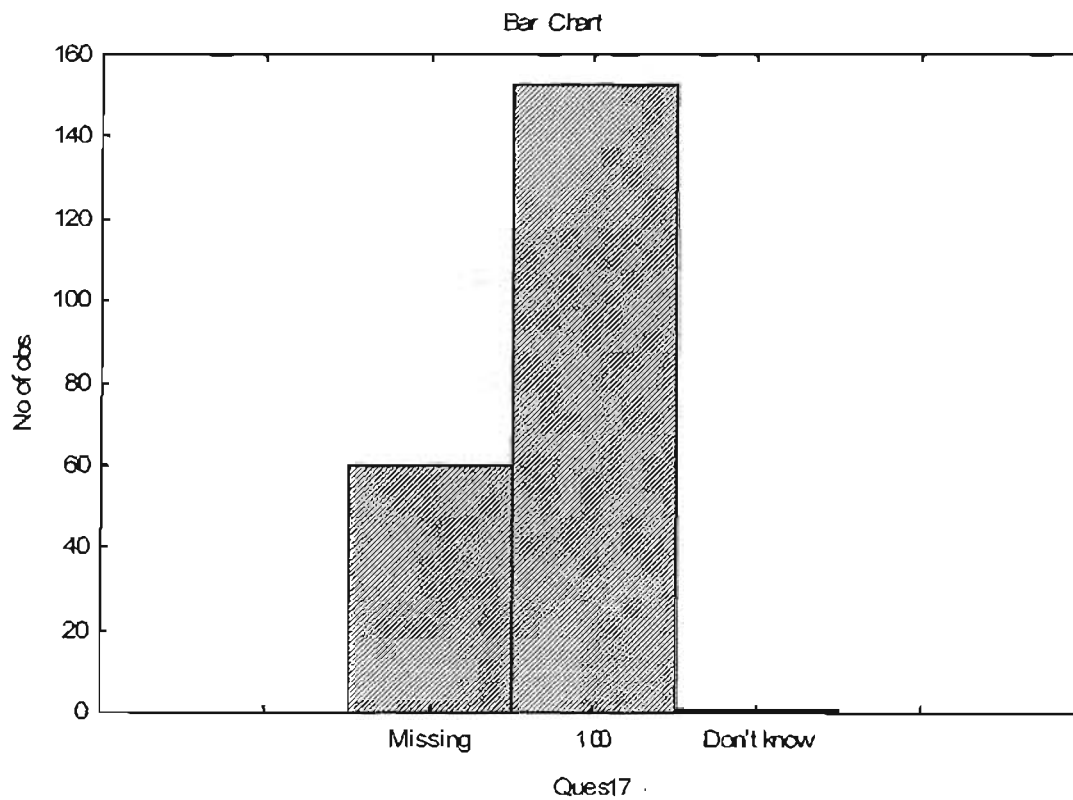


Graph.6

Category	Frequency table: Ques16			
	Count	Cumulative Count	Percent	Cumulative Percent
0	30	30	14.01869	14.0187
40	1	31	0.46729	14.4860
50	2	33	0.93458	15.4206
80	2	35	0.93458	16.3551
90	1	36	0.46729	16.8224
Don't know	106	142	49.53271	66.3551
Missing	72	214	33.64486	100.0000

**Table.13**

The overall level of compliance with regards to the submission of rule amendments appears to be high with a 71% (compliance). However, there were about 28% missing responses and a negligible less than 1% non-compliance.



**Graph.7**

Category	Frequency table: Ques17			
	Count	Cumulative Count	Percent	Cumulative Percent
100	153	153	71.49533	71.4953
Don't know	1	154	0.46729	71.9626
Missing	60	214	28.03738	100.0000

**Table.14**

#### 4.4.INVESTMENT MATTERS.

The management of the fund’s investments is one of the more complex and important areas in the effective operation of the fund. Questions related to trustees’ understanding of investment related matters.

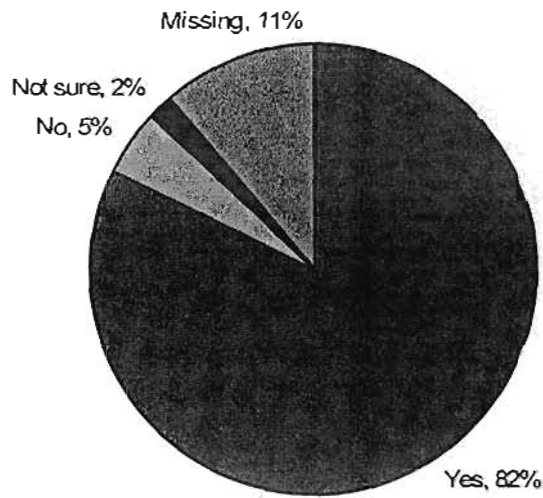
Paragraph 4.4.2 of Circular PF 98 states that:

“ The board should draw up a document setting out the investment policy for the fund, including delegation to investment managers and custodians where required, with the procedures necessary for monitoring investment performances and appropriateness of investments.”

When asked whether their fund’s investment strategy was formally documented, the trustees responded as follows:

82% said yes, 5% answered no, 2% were not sure while 11% did not respond to the question. The following Pie Chart and Frequency table depict their responses.

Pie Chart



Ques19

Fig.10

Frequency table: Ques19				
Category	Count	Cumulative Count	Percent	Cumulative Percent
Yes	176	176	82.24299	82.2430
No	10	186	4.67290	86.9159
Not sure	4	190	1.86916	88.7850
Missing	24	214	11.21495	100.0000

Table. 15

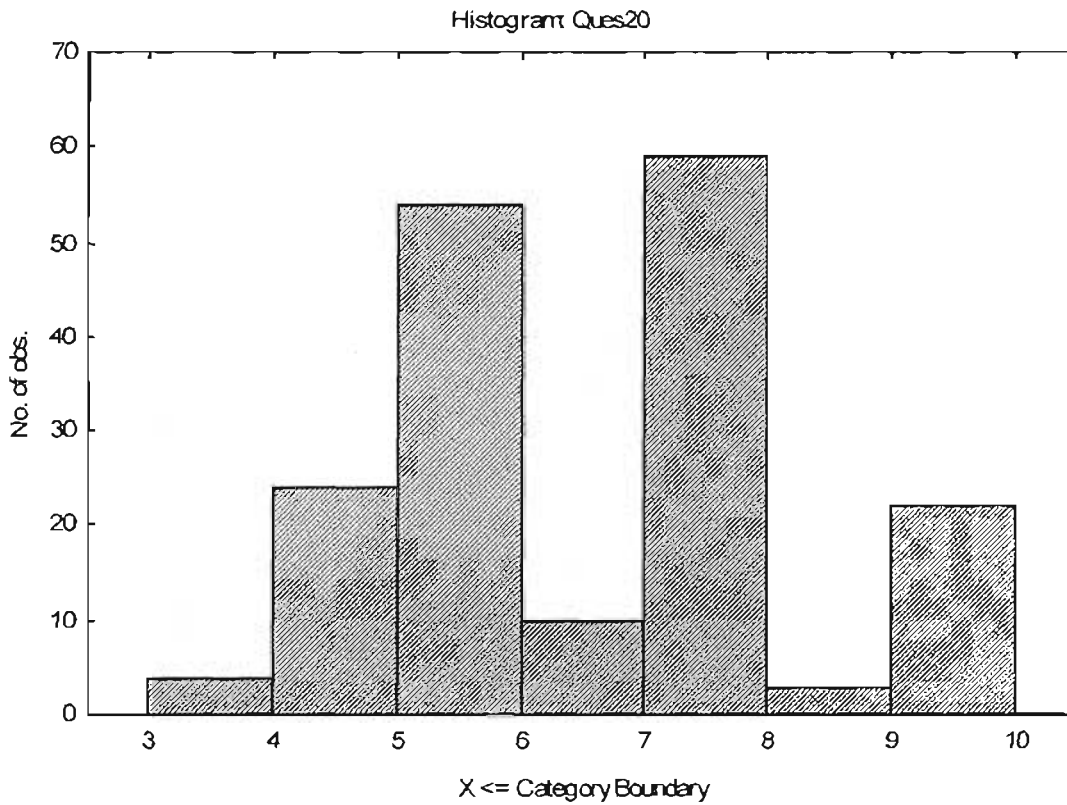
Question twenty of the questionnaire asked the respondents to rate their involvement in setting up their fund's investment strategy on a scale of 1-10.

The general perception amongst industry players is that a great deal of strategy formulation is left to advisors and consultants with very limited inputs from the trustees themselves.

The following bar Chart and Frequency table tell their story.

Variable	Descriptive Statistics				
	Valid N	Mean	Minimum	Maximum	Std.Dev.
Ques20	176	7.096591	4.000000	10.00000	1.609539

Table.16



Graph.8

Category	Frequency table: Ques20			
	Count	Cumulative Count	Percent	Cumulative Percent
4	4	4	1.86916	1.8692
5	24	28	11.21495	13.0841
6	54	82	25.23364	38.3178
7	10	92	4.67290	42.9907
8	59	151	27.57009	70.5607
9	3	154	1.40187	71.9626
10	22	176	10.28037	82.2430
Missing	38	214	17.75701	100.0000

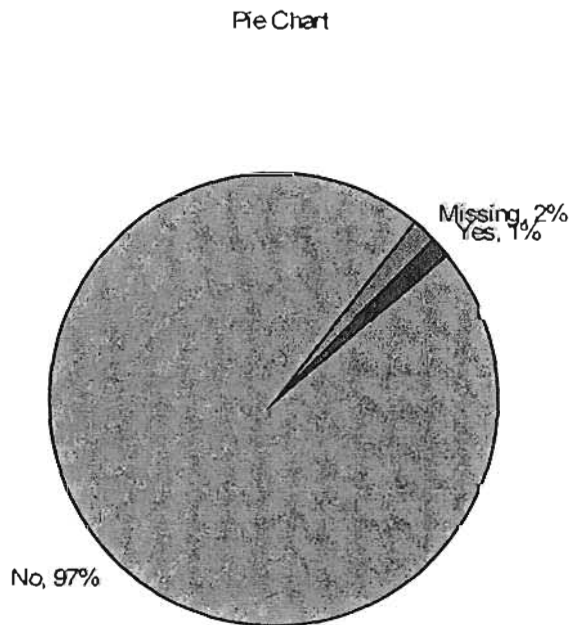
Table.17

On average 7:10 they said they do actively get involved in their fund's strategy formulation. This is good news and it is contrary to the belief held by many in the industry including myself.

The realization is starting to dawn that member communication is not only necessary but also that the real test for the credible oversight of retirement fund strategy is indeed member communication. Again the general perception out there is that the only member communication is through the year-end member statements, which do not necessarily articulate the investment strategy. Let me also note that it is the requirement of the Financial Services Board that fund strategies are communicated to members.

Question 21 of my questionnaire set out to ascertain whether the investment strategy was communicated to members.

A very disappointing 97% said their funds do not formally communicated the investment strategy to its members, 2% did not respond while only 1% see it necessary to do so.



Ques21

Fig.11

Frequency table: Ques21				
Category	Count	Cumulative Count	Percent	Cumulative Percent
Yes	3	3	1.40187	1.4019
No	207	210	96.72897	98.1308
Missing	4	214	1.86916	100.0000

**Table.18**

Global Investment Performance Standards are ethical standards for investment performance presentation to ensure fair representation and full disclosure of an investment firm's performance history.

I set out to ask the question: "Are you (trustees) familiar with investment performance standards?"

Responses to this question indicated that there is a great deal of work that is still needs to be done on this front. This is one area of governance we all (industry role players) need to work hard on.

81% of the respondents indicated that they are not familiar with these standards, 10% did not respond to the question while only 9% said yes.



Ques22

**Fig.12**

Frequency table: Ques23				
Category	Count	Cumulative Count	Percent	Cumulative Percent
Yes	28	28	13.08411	13.0841
No	96	124	44.85981	57.9439
Not sure	52	176	24.29907	82.2430
Missing	38	214	17.75701	100.0000

**Table.20**



## REPORT ON FINDINGS. 2

### Interaction analysis with Chi-Square testing of the significant relations

Summary Frequency Table (RETIREMENT FUND GOVERNANCE SURVEY DATA1.sta)  
 Marked cells have counts > 10  
 (Marginal summaries are not marked)

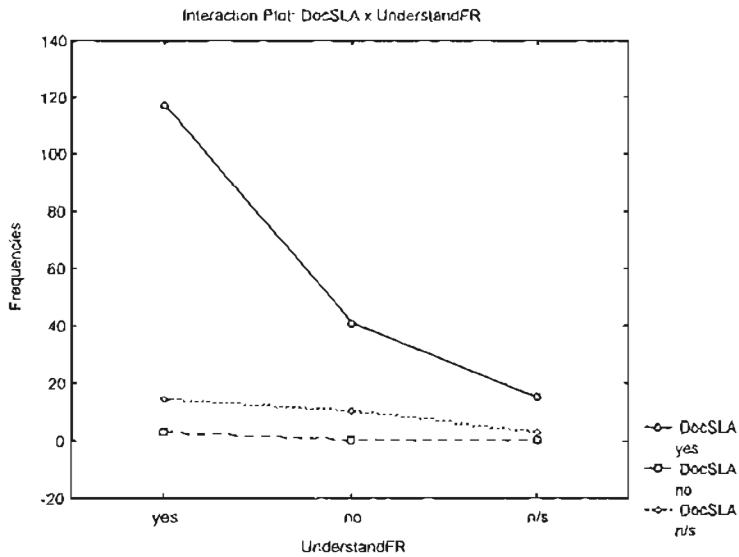
DocSLA	UnderstandFR yes	UnderstandFR no	UnderstandFR n/s	Row Totals
yes	117	41	15	173
no	3	0	0	3
n/s	14	10	3	27
All Grps.	134	51	18	203

Summary Frequency Table (RETIREMENT FUND GOVERNANCE SURVEY DATA1)  
 Marked cells have counts > 10  
 (Marginal summaries are not marked)

	DocSLA	UnderstandFR yes	UnderstandFR no	UnderstandFR n/s	Row Totals
Count	yes	117	41	15	173
Column Percent		87.31%	80.39%	83.33%	
Row Percent		67.63%	23.70%	8.67%	
Total Percent		57.64%	20.20%	7.39%	85.22%
Count	no	3	0	0	3
Column Percent		2.24%	0.00%	0.00%	
Row Percent		100.00%	0.00%	0.00%	
Total Percent		1.48%	0.00%	0.00%	1.48%
Count	n/s	14	10	3	27
Column Percent		10.45%	19.61%	16.67%	
Row Percent		51.85%	37.04%	11.11%	
Total Percent		6.90%	4.93%	1.48%	13.30%

Summary Table: Expected Frequencies (RETIREMENT FUND GOVERNANCE SURVEY DATA1.sta)  
 Marked cells have counts > 10  
 Pearson Chi-square: 4.25938, df=4, p=.372046

DocSLA	UnderstandFR yes	UnderstandFR no	UnderstandFR n/s	Row Totals
yes	114.1970	43.46305	15.33990	173.0000
no	1.9803	0.75369	0.26601	3.0000
n/s	17.8227	6.78325	2.39409	27.0000
All Grps.	134.0000	51.00000	18.00000	203.0000

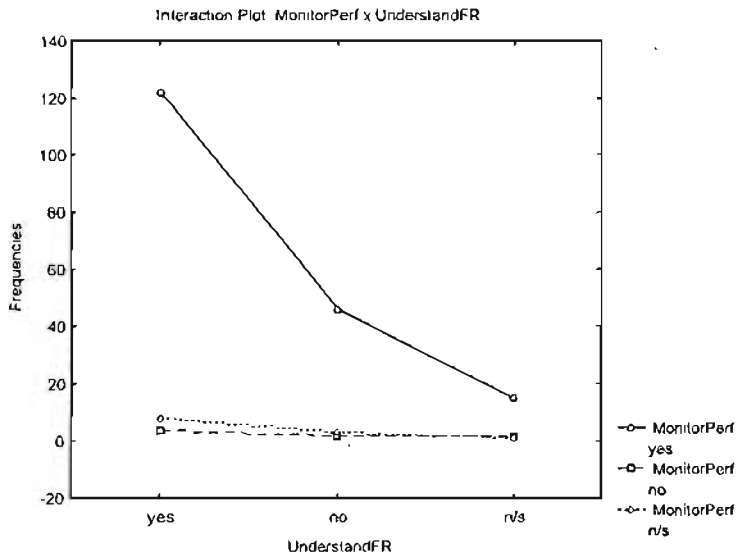


Summary Frequency Table (RETIREMENT FUND GOVERNANCE SURVEY DATA1)  
 Marked cells have counts > 10  
 (Marginal summaries are not marked)

	MonitorPerf	UnderstandFR			Row Totals
		yes	no	n/s	
Count	yes	122	46	15	183
Column Percent		91.04%	90.20%	83.33%	
Row Percent		66.67%	25.14%	8.20%	
Total Percent		60.10%	22.66%	7.39%	90.15%
Count	no	4	2	2	8
Column Percent		2.99%	3.92%	11.11%	
Row Percent		50.00%	25.00%	25.00%	
Total Percent		1.97%	0.99%	0.99%	3.94%
Count	n/s	8	3	1	12
Column Percent		5.97%	5.88%	5.56%	
Row Percent		66.67%	25.00%	8.33%	
Total Percent		3.94%	1.48%	0.49%	5.91%

Summary Table: Expected Frequencies (RETIREMENT FUND GOVERNANCE SURVEY DATA1.sta)  
 Marked cells have counts > 10  
 Pearson Chi-square: 2.76834, df=4, p=.597312

MonitorPerf	UnderstandFR			Row Totals
	yes	no	n/s	
yes	120.7980	45.97537	16.22660	183.0000
no	5.2808	2.00985	0.70936	8.0000
n/s	7.9212	3.01478	1.06404	12.0000
All Grps	134.0000	51.00000	18.00000	203.0000



Summary Frequency Table (RETIREMENT FUND GOVERNANCE SURVEY DATA1)  
 Marked cells have counts > 10  
 (Marginal summaries are not marked)

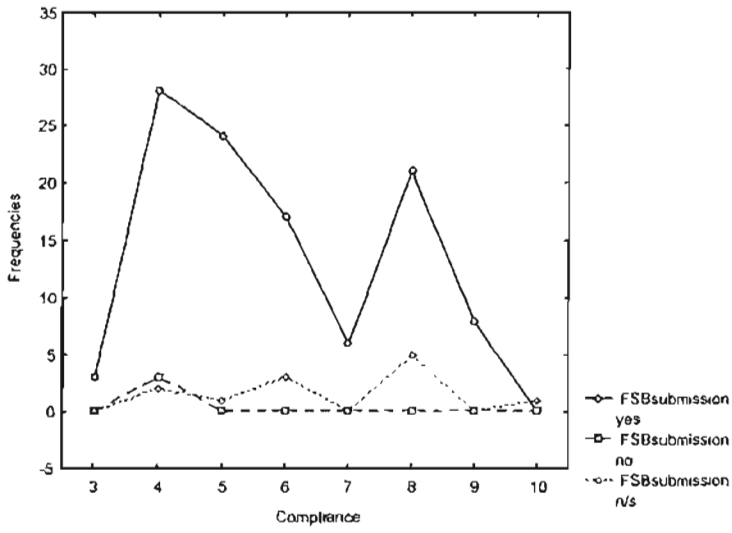
	FSBsubmission	Compliance 3	Compliance 4	Compliance 5	Compliance 6	Compliance 7
Count	yes	3	28	24	17	
Column Percent		100.00%	84.85%	96.00%	85.00%	100.00%
Row Percent		2.80%	26.17%	22.43%	15.89%	5.71%
Total Percent		2.46%	22.95%	19.67%	13.93%	4.74%
Count	no	0	3	0	0	
Column Percent		0.00%	9.09%	0.00%	0.00%	0.00%
Row Percent		0.00%	100.00%	0.00%	0.00%	0.00%
Total Percent		0.00%	2.46%	0.00%	0.00%	0.00%
Count	n/s	0	2	1	3	
Column Percent		0.00%	6.06%	4.00%	15.00%	0.00%
Row Percent		0.00%	16.67%	8.33%	25.00%	0.00%
Total Percent		0.00%	1.64%	0.82%	2.46%	0.00%

Summary Table: Expected Frequencies (RETIREMENT FUND GOVERNANCE SURVEY DATA1.sta)  
 Marked cells have counts > 10  
 Pearson Chi-square: 23.8034, df=14, p=.048408

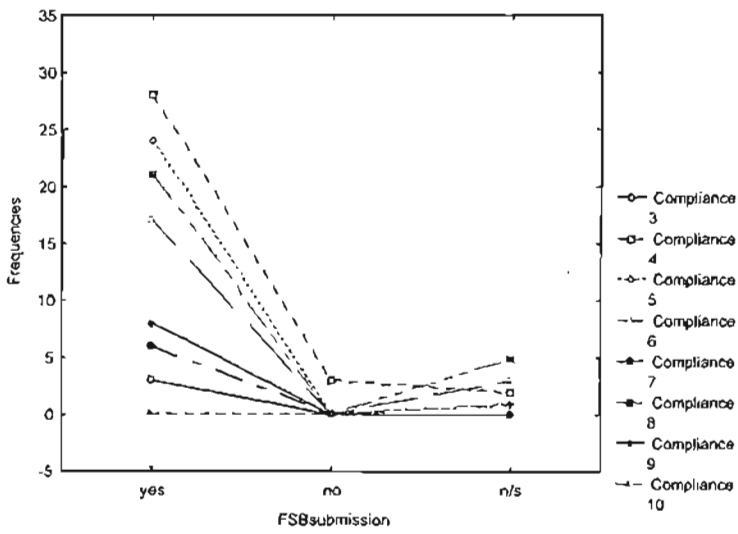
FSBsubmission	Compliance 3	Compliance 4	Compliance 5	Compliance 6	Compliance 7	Compliance 8
yes	2.631148	28.94262	21.92623	17.54098	5.262295	22.80328
no	0.073770	0.81148	0.61475	0.49180	0.147541	0.63934
n/s	0.295082	3.24590	2.45902	1.96721	0.590164	2.55738
All Grps	3.000000	33.00000	25.00000	20.00000	6.000000	26.00000

Compliance is not independent of FSB submission (they are related)

Interaction Plot: FSBsubmission x Compliance



Interaction Plot Compliance x FSBsubmission



Summary Frequency Table (RETIREMENT FUND GOVERNANCE SURVEY DATA1 Marked cells have counts > 10 (Marginal summaries are not marked)				
	Compliance	FSBsubmission no	FSBsubmission n/s	Row Totals
Count	3	0	0	0
Column Percent		0.00%	0.00%	
Row Percent				
Total Percent		0.00%	0.00%	0.00%
Count	4	3	2	5
Column Percent		100.00%	16.67%	
Row Percent		60.00%	40.00%	
Total Percent		20.00%	13.33%	33.33%
Count	5	0	1	1
Column Percent		0.00%	8.33%	
Row Percent		0.00%	100.00%	
Total Percent		0.00%	6.67%	6.67%

Summary Table: Expected Frequencies (RETIREMENT FUND GOVERNANCE SURVEY DATA1.sta)  
Marked cells have counts > 10  
Pearson Chi-square: ---

Compliance	FSBsubmission no	FSBsubmission n/s	Row Totals
3	0.000000	0.000000	0.000000
4	1.000000	4.000000	5.000000
5	0.200000	0.800000	1.000000
6	0.600000	2.400000	3.000000
7	0.000000	0.000000	0.000000
8	1.000000	4.000000	5.000000
9	0.000000	0.000000	0.000000
10	0.200000	0.800000	1.000000
All Grps	3.000000	12.000000	15.000000

Summary Frequency Table (RETIREMENT FUND GOVERNANCE SURVEY DATA1 Marked cells have counts > 10 (Marginal summaries are not marked)					
	LevOfIdemnity	FidelityCover yes	FidelityCover no	FidelityCover n/s	Row Totals
Count	100	7	0	2	9
Column Percent		3.68%	0.00%	15.38%	
Row Percent		77.78%	0.00%	22.22%	
Total Percent		3.35%	0.00%	0.96%	4.31%
Count	n/s	183	6	11	200
Column Percent		96.32%	100.00%	84.62%	
Row Percent		91.50%	3.00%	5.50%	
Total Percent		87.56%	2.87%	5.26%	95.69%
Count	All Grps	190	6	13	209
Total Percent		90.91%	2.87%	6.22%	

Summary Table: Expected Frequencies (RETIREMENT FUND GOVERNANCE SURVEY DATA1.sta)

Marked cells have counts > 10

Pearson Chi-square: 4.32023, df=2, p=.115317

LevOffdemnity	FidelityCover yes	FidelityCover no	FidelityCover n/s	Row Totals
100	8.1818	0.258373	0.55981	9.0000
n/s	181.8182	5.741627	12.44019	200.0000
All Grps	190.0000	6.000000	13.00000	209.0000

Summary Frequency Table (RETIREMENT FUND GOVERNANCE SURVEY DATA1

Marked cells have counts > 10

(Marginal summaries are not marked)

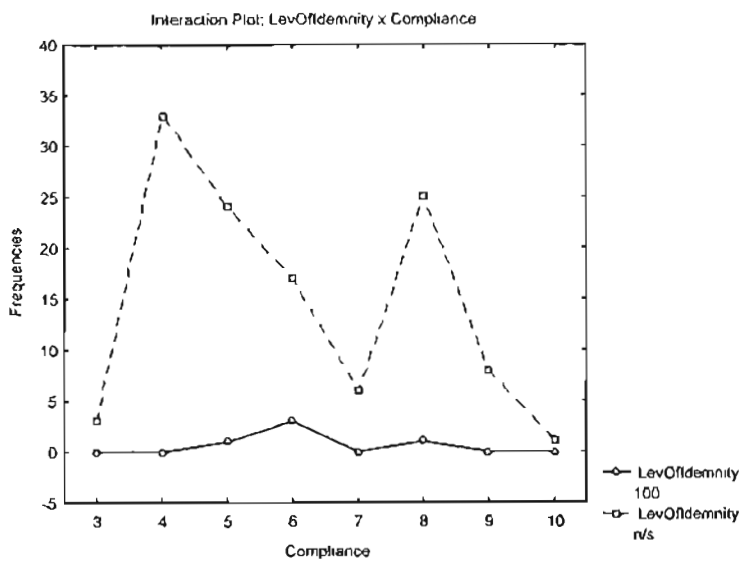
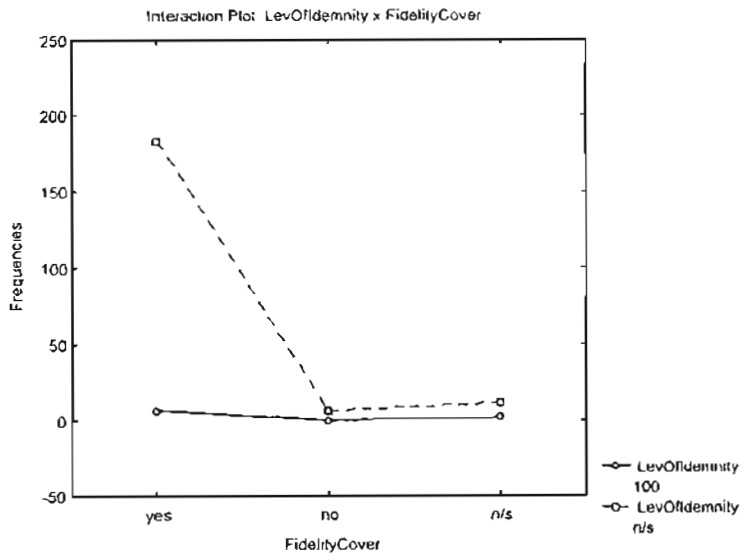
LevOffdemnity	Compliance 3	Compliance 4	Compliance 5	Compliance 6	Compliance 7
Count	100	0	0	1	3
Column Percent		0.00%	0.00%	4.00%	15.00%
Row Percent		0.00%	0.00%	20.00%	60.00%
Total Percent		0.00%	0.00%	0.82%	2.46%
Count	n/s	3	33	24	17
Column Percent		100.00%	100.00%	96.00%	85.00%
Row Percent		2.56%	28.21%	20.51%	14.53%
Total Percent		2.46%	27.05%	19.67%	13.93%
Count	All Grps	3	33	25	20
Total Percent		2.46%	27.05%	20.49%	16.39%

Summary Table: Expected Frequencies (RETIREMENT FUND GOVERNANCE SURVEY DATA1.sta)

Marked cells have counts > 10

Pearson Chi-square: 8.23183, df=7, p=.312607

LevOffdemnity	Compliance 3	Compliance 4	Compliance 5	Compliance 6	Compliance 7	Compliance 8
100	0.122951	1.35246	1.02459	0.81967	0.245902	1.06557
n/s	2.877049	31.64754	23.97541	19.18033	5.754098	24.93443
All Grps	3.000000	33.00000	25.00000	20.00000	6.000000	26.00000



Summary Frequency Table (RETIREMENT FUND GOVERNANCE SURVEY DATA1)						
Marked cells have counts > 10						
(Marginal summaries are not marked)						
	NoOfTrustees	Compliance 3	Compliance 4	Compliance 5	Compliance 6	Compliance 7
Count	8	0	4	5	11	
Column Percent		0.00%	12.12%	20.00%	55.00%	50.00%
Row Percent		0.00%	11.11%	13.89%	30.56%	8.33%
Total Percent		0.00%	3.28%	4.10%	9.02%	2.44%
Count	10	1	13	6	3	
Column Percent		33.33%	39.39%	24.00%	15.00%	33.33%
Row Percent		2.86%	37.14%	17.14%	8.57%	5.71%
Total Percent		0.82%	10.66%	4.92%	2.46%	1.63%
Count	12	2	16	14	6	
Column Percent		66.67%	48.48%	56.00%	30.00%	16.67%
Row Percent		3.92%	31.37%	27.45%	11.76%	1.90%
Total Percent		1.64%	13.11%	11.48%	4.92%	0.82%

Summary Table: Expected Frequencies (RETIREMENT FUND GOVERNANCE SURVEY DATA1.sta)

Marked cells have counts > 10

Pearson Chi-square: 21.4668, df=14, p=.090279

NoOfTrustees	Compliance 3	Compliance 4	Compliance 5	Compliance 6	Compliance 7	Compliance 8
8	0.885246	9.73770	7.37705	5.90164	1.770492	7.67213
10	0.860656	9.46721	7.17213	5.73770	1.721311	7.45902
12	1.254098	13.79508	10.45082	8.36066	2.508197	10.86885
All Grps	3.000000	33.00000	25.00000	20.00000	6.000000	26.00000

Summary Frequency Table (RETIREMENT FUND GOVERNANCE SURVEY DATA1)						
Marked cells have counts > 10						
(Marginal summaries are not marked)						
	IndepTrustees	Compliance 3	Compliance 4	Compliance 5	Compliance 6	Compliance 7
Count	0	3	33	25	19	
Column Percent		100.00%	100.00%	100.00%	95.00%	100.00%
Row Percent		2.50%	27.50%	20.83%	15.83%	5.00%
Total Percent		2.46%	27.05%	20.49%	15.57%	4.48%
Count	1	0	0	0	1	
Column Percent		0.00%	0.00%	0.00%	5.00%	0.00%
Row Percent		0.00%	0.00%	0.00%	50.00%	0.00%
Total Percent		0.00%	0.00%	0.00%	0.82%	0.00%
Count	All Grps	3	33	25	20	
Total Percent		2.46%	27.05%	20.49%	16.39%	4.48%



Summary Table: Expected Frequencies (RETIREMENT FUND GOVERNANCE SURVEY DATA1.sta)

Marked cells have counts > 10

Pearson Chi-square: 8.81958, df=7, p=.265883

IndepTrustees	Compliance 3	Compliance 4	Compliance 5	Compliance 6	Compliance 7	Compliance 8
0	2.950820	32.45902	24.59016	19.67213	5.901639	25.57377
1	0.049180	0.54098	0.40984	0.32787	0.098361	0.42623
All Grps	3.000000	33.00000	25.00000	20.00000	6.000000	26.00000

Summary Frequency Table (RETIREMENT FUND GOVERNANCE SURVEY DATA1 Marked cells have counts > 10 (Marginal summaries are not marked)						
	CPOrigin	Compliance 3	Compliance 4	Compliance 5	Compliance 6	Compliance 7
Count	Emp-e	2	28	15	15	2
Column Percent		66.67%	84.85%	60.00%	75.00%	33.33%
Row Percent		2.38%	33.33%	17.86%	17.86%	2.38%
Total Percent		1.64%	22.95%	12.30%	12.30%	1.64%
Count	Emp-er	1	5	10	5	4
Column Percent		33.33%	15.15%	40.00%	25.00%	66.67%
Row Percent		2.63%	13.16%	26.32%	13.16%	10.53%
Total Percent		0.82%	4.10%	8.20%	4.10%	3.28%
Count	All Grps	3	33	25	20	6
Total Percent		2.46%	27.05%	20.49%	16.39%	4.92%

Summary Table: Expected Frequencies (RETIREMENT FUND GOVERNANCE SURVEY DATA1.sta)

Marked cells have counts > 10

Pearson Chi-square: 11.2464, df=7, p=.128239

CPOrigin	Compliance 3	Compliance 4	Compliance 5	Compliance 6	Compliance 7	Compliance 8	Compliance 9
Emp-e	2.065574	22.72131	17.21311	13.77049	4.131148	17.90164	5
Emp-er	0.934426	10.27869	7.78689	6.22951	1.868852	8.09836	2
All Grps	3.000000	33.00000	25.00000	20.00000	6.000000	26.00000	8

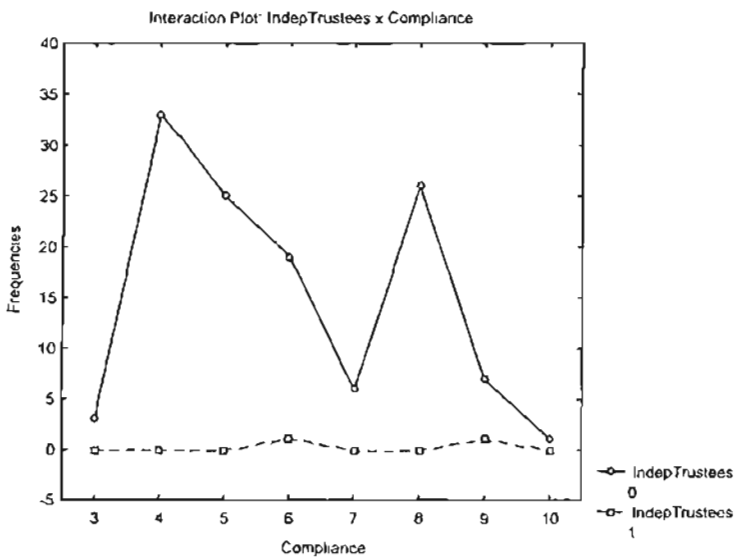
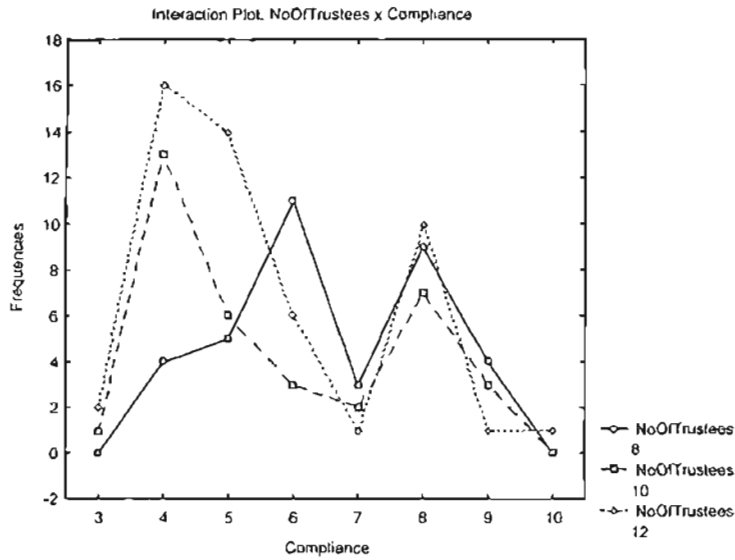
Summary Frequency Table (RETIREMENT FUND GOVERNANCE SURVEY DATA1 Marked cells have counts > 10 (Marginal summaries are not marked)						
	Meet/Annum	Compliance 3	Compliance 4	Compliance 5	Compliance 6	Compliance 7
Count	2	0	0	0	0	0
Column Percent		0.00%	0.00%	0.00%	0.00%	0.00%
Row Percent						
Total Percent		0.00%	0.00%	0.00%	0.00%	0.00%
Count	4	3	33	25	20	
Column Percent		100.00%	100.00%	100.00%	100.00%	100.00%
Row Percent		2.46%	27.05%	20.49%	16.39%	4.92%
Total Percent		2.46%	27.05%	20.49%	16.39%	4.92%
Count	All Grps	3	33	25	20	
Total Percent		2.46%	27.05%	20.49%	16.39%	4.92%

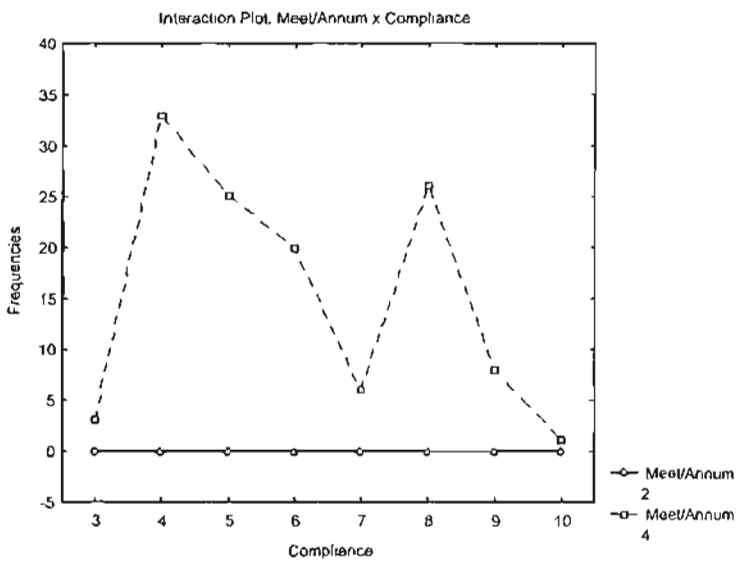
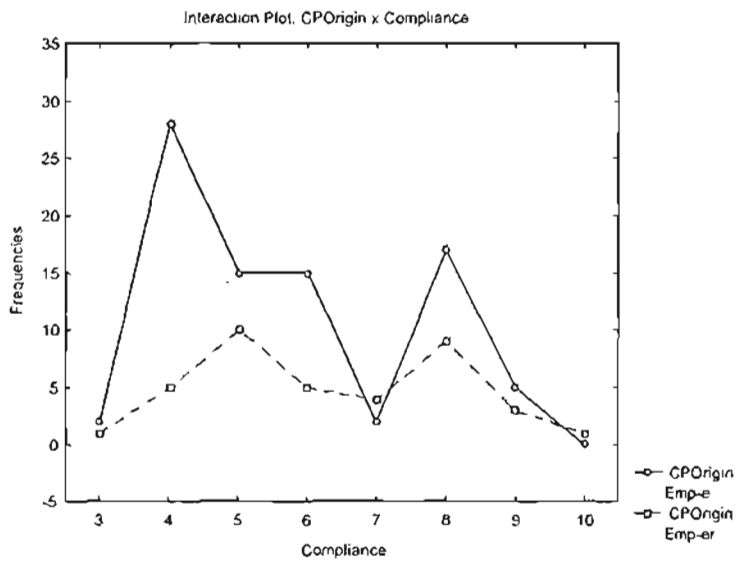
Summary Table: Expected Frequencies (RETIREMENT FUND GOVERNANCE SURVEY DATA1.sta)

Marked cells have counts > 10

Pearson Chi-square: ----

Meet/Annun	Compliance 3	Compliance 4	Compliance 5	Compliance 6	Compliance 7	Compliance 8
2	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000
4	3.000000	33.000000	25.000000	20.000000	6.000000	26.000000
All Grps	3.000000	33.000000	25.000000	20.000000	6.000000	26.000000





Summary Frequency Table (RETIREMENT FUND GOVERNANCE SURVEY DATA1)					
Marked cells have counts > 10 (Marginal summaries are not marked)					
	NoticePeriod	UnderstandFR yes	UnderstandFR no	UnderstandFR n/s	Row Totals
Count	0	13	1	0	14
Column Percent		9.92%	2.08%	0.00%	
Row Percent		92.86%	7.14%	0.00%	
Total Percent		6.63%	0.51%	0.00%	7.14%
Count	1	3	4	0	7
Column Percent		2.29%	8.33%	0.00%	
Row Percent		42.86%	57.14%	0.00%	
Total Percent		1.53%	2.04%	0.00%	3.57%
Count	7	7	7	2	16
Column Percent		5.34%	14.58%	11.76%	
Row Percent		43.75%	43.75%	12.50%	
Total Percent		3.57%	3.57%	1.02%	8.16%

Summary Table: Expected Frequencies (RETIREMENT FUND GOVERNANCE SURVEY DATA1.sta)  
 Marked cells have counts > 10  
 Pearson Chi-square: 12.9353, df=6, p=.044084

NoticePeriod	UnderstandFR yes	UnderstandFR no	UnderstandFR n/s	Row Totals
0	9.3571	3.42857	1.21429	14.0000
1	4.6786	1.71429	0.60714	7.0000
7	10.6939	3.91837	1.38776	16.0000
14	106.2704	38.93878	13.79082	159.0000
All Grps	131.0000	48.00000	17.00000	196.0000

Notice period is related to UnderstandFR

Summary Frequency Table (RETIREMENT FUND GOVERNANCE SURVEY DATA1)						
Marked cells have counts > 10 (Marginal summaries are not marked)						
	NoticePeriod	Compliance 3	Compliance 4	Compliance 5	Compliance 6	Compliance 7
Count	0	0	1	7	2	
Column Percent		0.00%	3.33%	28.00%	10.00%	16.67%
Row Percent		0.00%	8.33%	58.33%	16.67%	8.33%
Total Percent		0.00%	0.84%	5.88%	1.68%	0.83%
Count	1	0	0	1	3	
Column Percent		0.00%	0.00%	4.00%	15.00%	0.00%
Row Percent		0.00%	0.00%	16.67%	50.00%	0.00%
Total Percent		0.00%	0.00%	0.84%	2.52%	0.00%
Count	7	0	2	0	0	
Column Percent		0.00%	6.67%	0.00%	0.00%	16.67%
Row Percent		0.00%	16.67%	0.00%	0.00%	8.33%
Total Percent		0.00%	1.68%	0.00%	0.00%	0.83%

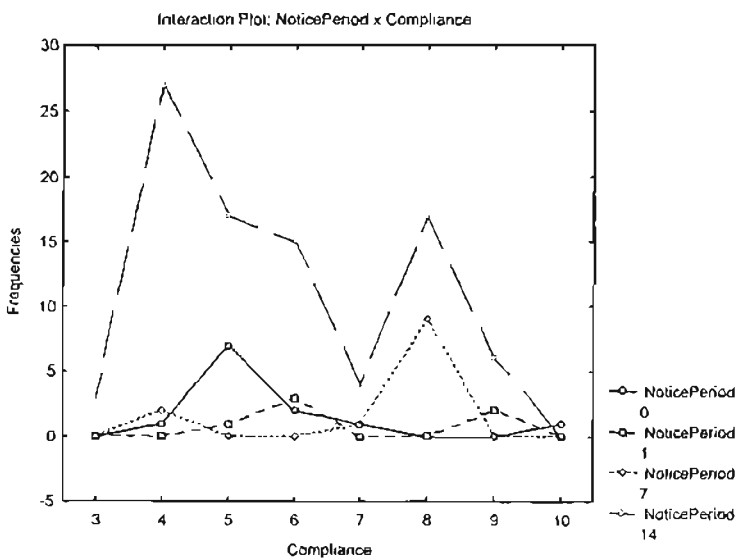
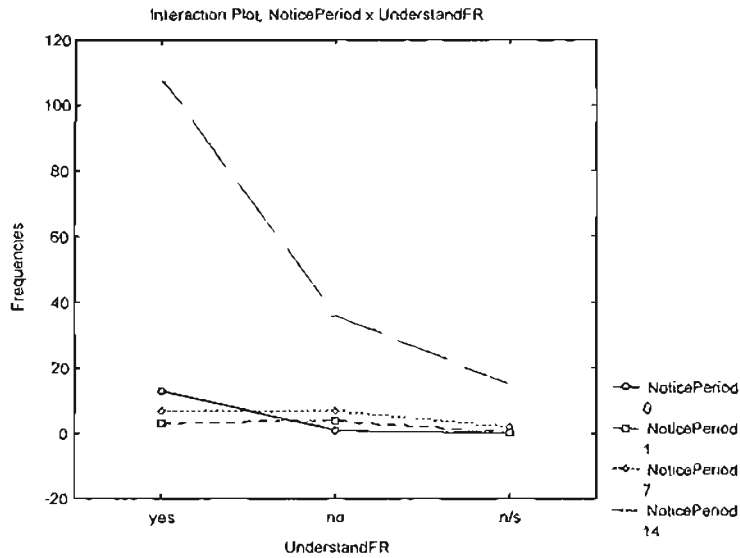
Summary Table: Expected Frequencies (RETIREMENT FUND GOVERNANCE SURVEY DATA1.sta)

Marked cells have counts > 10

Pearson Chi-square: 59.2698, df=21, p=.000017

NoticePeriod	Compliance 3	Compliance 4	Compliance 5	Compliance 6	Compliance 7	Compliance 8
0	0.302521	3.02521	2.52101	2.01681	0.605042	2.62185
1	0.151261	1.51261	1.26050	1.00840	0.302521	1.31092
7	0.302521	3.02521	2.52101	2.01681	0.605042	2.62185
14	2.243697	22.43697	18.69748	14.95798	4.487395	19.44538
All Grps	3.000000	30.00000	25.00000	20.00000	6.000000	26.00000

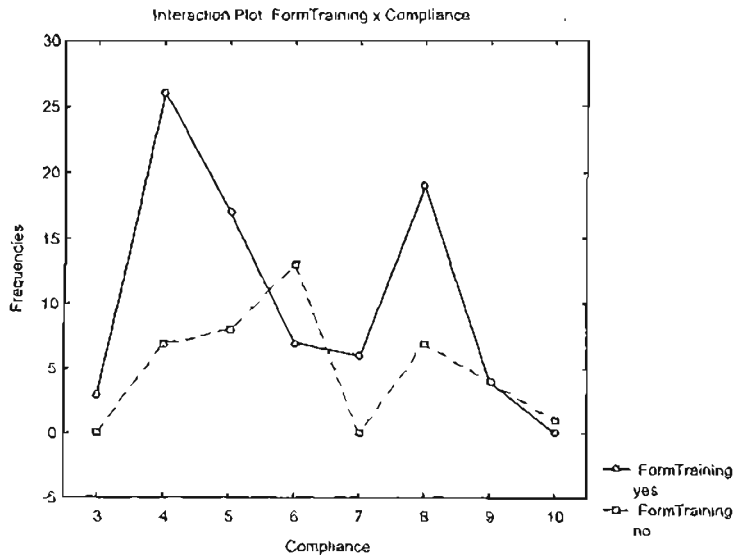
Notice period is related to Compliance



Summary Frequency Table (RETIREMENT FUND GOVERNANCE SURVEY DATA1)						
Marked cells have counts > 10 (Marginal summaries are not marked)						
	FormTraining	Compliance 3	Compliance 4	Compliance 5	Compliance 6	Compliance 7
Count	yes	3	26	17	7	
Column Percent		100.00%	78.79%	68.00%	35.00%	100.00%
Row Percent		3.66%	31.71%	20.73%	8.54%	7.32%
Total Percent		2.46%	21.31%	13.93%	5.74%	4.91%
Count	no	0	7	8	13	
Column Percent		0.00%	21.21%	32.00%	65.00%	0.00%
Row Percent		0.00%	17.50%	20.00%	32.50%	0.00%
Total Percent		0.00%	5.74%	6.56%	10.66%	0.00%
Count	All Grps	3	33	25	20	
Total Percent		2.46%	27.05%	20.49%	16.39%	4.91%

Summary Table: Expected Frequencies (RETIREMENT FUND GOVERNANCE SURVEY DATA1.sta)						
Marked cells have counts > 10						
Pearson Chi-square: 19.3524, df=7, p=.007156						
FormTraining	Compliance 3	Compliance 4	Compliance 5	Compliance 6	Compliance 7	Compliance 8
yes	2.016393	22.18033	16.80328	13.44262	4.032787	17.47541
no	0.983607	10.81967	8.19672	6.55738	1.967213	8.52459
All Grps	3.000000	33.00000	25.00000	20.00000	6.000000	26.00000

Formal Training is related with Compliance

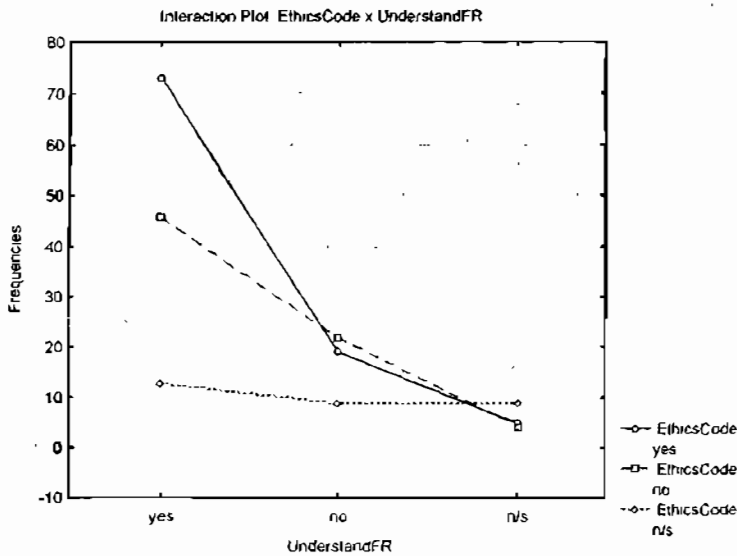


Summary Frequency Table (RETIREMENT FUND GOVERNANCE SURVEY DATA1 Marked cells have counts > 10 (Marginal summaries are not marked)					
	EthicsCode	UnderstandFR yes	UnderstandFR no	UnderstandFR n/s	Row Totals
Count	yes	73	19	5	97
Column Percent		55.30%	38.00%	27.78%	
Row Percent		75.26%	19.59%	5.15%	
Total Percent		36.50%	9.50%	2.50%	48.50%
Count	no	46	22	4	72
Column Percent		34.85%	44.00%	22.22%	
Row Percent		63.89%	30.56%	5.56%	
Total Percent		23.00%	11.00%	2.00%	36.00%
Count	n/s	13	9	9	31
Column Percent		9.85%	18.00%	50.00%	
Row Percent		41.94%	29.03%	29.03%	
Total Percent		6.50%	4.50%	4.50%	15.50%

Summary Table: Expected Frequencies (RETIREMENT FUND GOVERNANCE SURVEY DATA1.sta)  
Marked cells have counts > 10  
Pearson Chi-square: 22.6204, df=4, p=.000151

EthicsCode	UnderstandFR yes	UnderstandFR no	UnderstandFR n/s	Row Totals
yes	64.0200	24.25000	8.73000	97.0000
no	47.5200	18.00000	6.48000	72.0000
n/s	20.4600	7.75000	2.79000	31.0000
All Grps	132.0000	50.00000	18.00000	200.0000

Ethics code is related with UnderstandFR



Summary Frequency Table (RETIREMENT FUND GOVERNANCE SURVEY DATA1.sta)

Marked cells have counts > 10

(Marginal summaries are not marked)

RisksAddressed	UnderstandFR yes	UnderstandFR no	UnderstandFR n/s	Row Totals
yes	49	18	9	76
no	47	19	3	69
n/s	29	11	3	43
All Grps	125	48	15	188

Summary Frequency Table (RETIREMENT FUND GOVERNANCE SURVEY DATA1.sta)

Marked cells have counts > 10

(Marginal summaries are not marked)

RisksAddressed	Compliance 3	Compliance 4	Compliance 5	Compliance 6	Compliance 7
yes	3	9	14	8	0
no	0	11	8	10	3
n/s	0	6	2	1	2
All Grps	3	26	24	19	5

Summary Frequency Table (RETIREMENT FUND GOVERNANCE SURVEY DATA1

Marked cells have counts > 10

(Marginal summaries are not marked)

	RisksAddressed	UnderstandFR yes	UnderstandFR no	UnderstandFR n/s	Row Totals
Count	yes	49	18	9	76
Column Percent		39.20%	37.50%	60.00%	
Row Percent		64.47%	23.68%	11.84%	
Total Percent		26.06%	9.57%	4.79%	40.43%
Count	no	47	19	3	69
Column Percent		37.60%	39.58%	20.00%	
Row Percent		68.12%	27.54%	4.35%	
Total Percent		25.00%	10.11%	1.60%	36.70%
Count	n/s	29	11	3	43
Column Percent		23.20%	22.92%	20.00%	
Row Percent		67.44%	25.58%	6.98%	
Total Percent		15.43%	5.85%	1.60%	22.87%



Summary Table: Expected Frequencies (RETIREMENT FUND GOVERNANCE SURVEY DATA1.sta)

Marked cells have counts > 10

Pearson Chi-square: 2.90593, df=4, p=.573691

RisksAddressed	UnderstandFR yes	UnderstandFR no	UnderstandFR n/s	Row Totals
yes	50.5319	19.40426	6.06383	76.0000
no	45.8777	17.61702	5.50532	69.0000
n/s	28.5904	10.97872	3.43085	43.0000
All Grps	125.0000	48.00000	15.00000	188.0000

Summary Frequency Table (RETIREMENT FUND GOVERNANCE SURVEY DATA1  
Marked cells have counts > 10  
(Marginal summaries are not marked)

RisksAddressed	Compliance 3	Compliance 4	Compliance 5	Compliance 6	Compliance 7
Count	yes 3	9	14	8	
Column Percent	100.00%	34.62%	58.33%	42.11%	0
Row Percent	6.67%	20.00%	31.11%	17.78%	0
Total Percent	2.70%	8.11%	12.61%	7.21%	0
Count	no 0	11	8	10	
Column Percent	0.00%	42.31%	33.33%	52.63%	60
Row Percent	0.00%	26.83%	19.51%	24.39%	7
Total Percent	0.00%	9.91%	7.21%	9.01%	2
Count	n/s 0	6	2	1	
Column Percent	0.00%	23.08%	8.33%	5.26%	40
Row Percent	0.00%	24.00%	8.00%	4.00%	8
Total Percent	0.00%	5.41%	1.80%	0.90%	1

Summary Table: Expected Frequencies (RETIREMENT FUND GOVERNANCE SURVEY DATA1.sta)

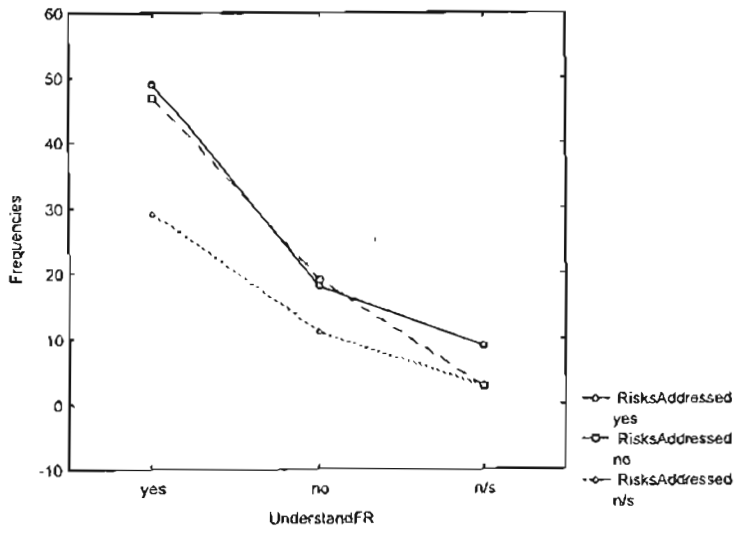
Marked cells have counts > 10

Pearson Chi-square: 29.0267, df=14, p=.010372

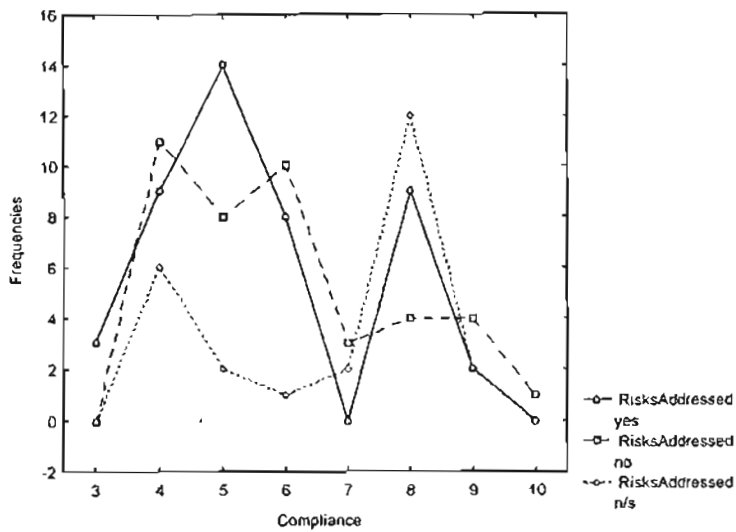
RisksAddressed	Compliance 3	Compliance 4	Compliance 5	Compliance 6	Compliance 7	Compliance 8
yes	1.216216	10.54054	9.72973	7.70270	2.027027	10.13514
no	1.108108	9.60360	8.86486	7.01802	1.846847	9.23423
n/s	0.675676	5.85586	5.40541	4.27928	1.126126	5.63063
All Grps	3.000000	26.00000	24.00000	19.00000	5.000000	25.00000

RisksAddressed is related to level of Compliance

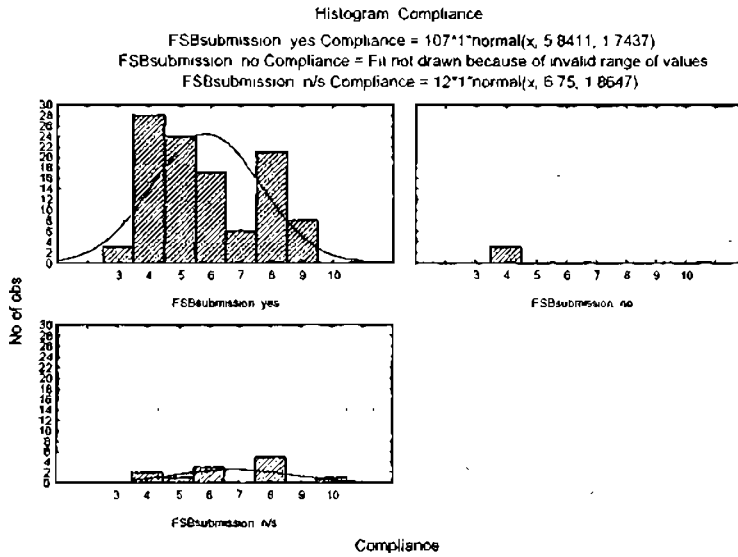
Interaction Plot RisksAddressed x UnderstandFR



Interaction Plot, RisksAddressed x Compliance



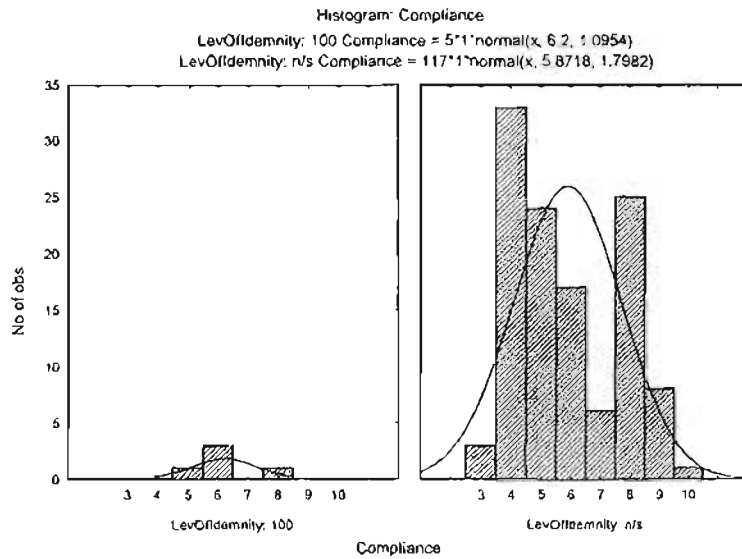
## ANOVA tests on equality of means



Analysis of Variance (RETIREMENT FUND GOVERNANCE SURVEY DATA1.sta)								
Marked effects are significant at p < .05000								
Variable	SS Effect	df Effect	MS Effect	SS Error	df Error	MS Error	F	p
Compliance	19.84438	2	9.922189	360.5491	119	3.029824	3.274840	0.041259

2-Way Tables of Descriptive Statistics (RETIREMENT FUND GOVERNANCE SURVEY DATA1.sta)			
Smallest N for any variable: 122			
FSBsubmission	Compliance Means	Compliance N	Compliance Std.Dev.
yes: YES	5.841121	107	1.743719
no: NO	4.000000	3	0.000000
n/s: NOT SURE	6.750000	12	1.864745
All Grps.	5.885246	122	1.773062

Those, who answered "No" to question 3, have significantly lower estimated level of compliance (quest. 15)

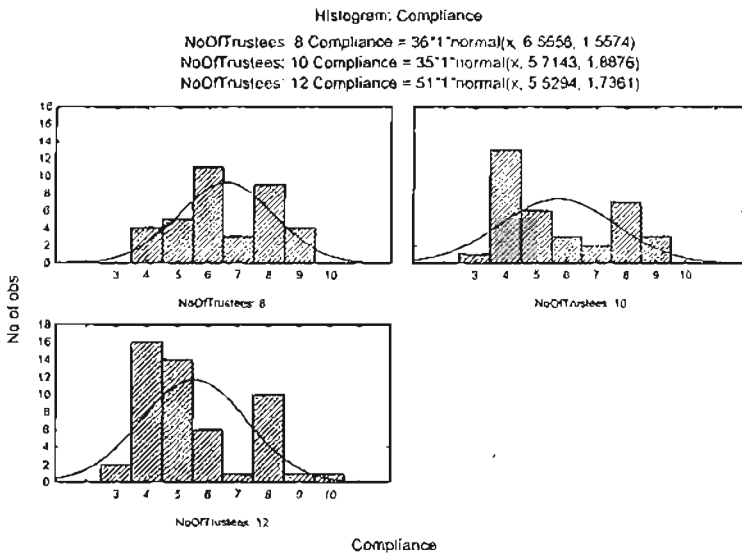


Analysis of Variance (RETIREMENT FUND GOVERNANCE SURVEY DATA1.sta)  
 Marked effects are significant at p < .05000

Variable	SS Effect	df Effect	MS Effect	SS Error	df Error	MS Error	F	p
Compliance	0.516520	1	0.516520	379.8769	120	3.165641	0.163164	0.686979

2-Way Tables of Descriptive Statistics (RETIREMENT FUND GOVERNANCE SURVEY)  
 Smallest N for any variable: 122

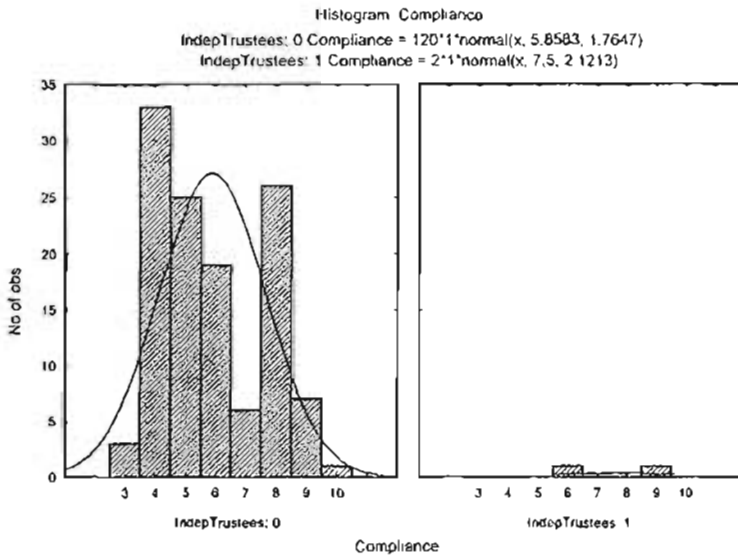
LevOfIdemtny	Compliance Means	Compliance N	Compliance Std.Dev.
100	6.200000	5	1.095445
n/s: not sure	5.871795	117	1.798172
All Grps.	5.885246	122	1.773062



Analysis of Variance (RETIREMENT FUND GOVERNANCE SURVEY DATA1.sta)								
Marked effects are significant at p < .05000								
Variable	SS Effect	df Effect	MS Effect	SS Error	df Error	MS Error	F	p
Compliance	23.65581	2	11.82791	356.7376	119	2.997795	3.945535	0.021923

2-Way Tables of Descriptive Statistics (RETIREMENT FUND GOVERNANCE SURVEY I)			
Smallest N for any variable: 122			
NoOfTrustees	Compliance Means	Compliance N	Compliance Std.Dev.
8	6.555556	36	1.557369
10	5.714286	35	1.887598
12	5.529412	51	1.736121
All Grps	5.885246	122	1.773062

The more trustees, the lower is compliance.

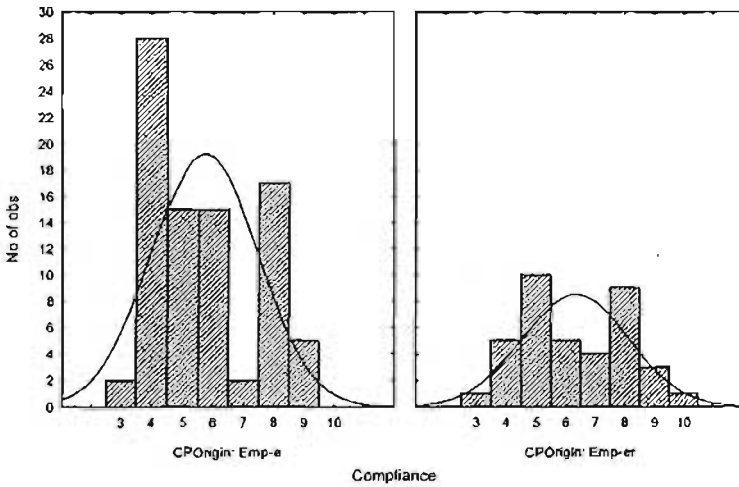


2-Way Tables of Descriptive Statistics (RETIREMENT FUND GOVERNANCE SURVEY I)			
Smallest N for any variable: 122			
IndepTrustees	Compliance Means	Compliance N	Compliance Std.Dev.
0	5.858333	120	1.764714
1	7.500000	2	2.121320
All Grps	5.885246	122	1.773062

Analysis of Variance (RETIREMENT FUND GOVERNANCE SURVEY DATA1.sta)								
Marked effects are significant at p < .05000								
Variable	SS Effect	df Effect	MS Effect	SS Error	df Error	MS Error	F	p
Compliance	5.301776	1	5.301776	375.0917	120	3.125764	1.696154	0.195286

Histogram: Compliance

CPOrigin: Emp-e Compliance = 84\*1\*normal(x, 5.6905, 1.7423)  
 CPOrigin: Emp-er Compliance = 38\*1\*normal(x, 6.3158, 1.7874)

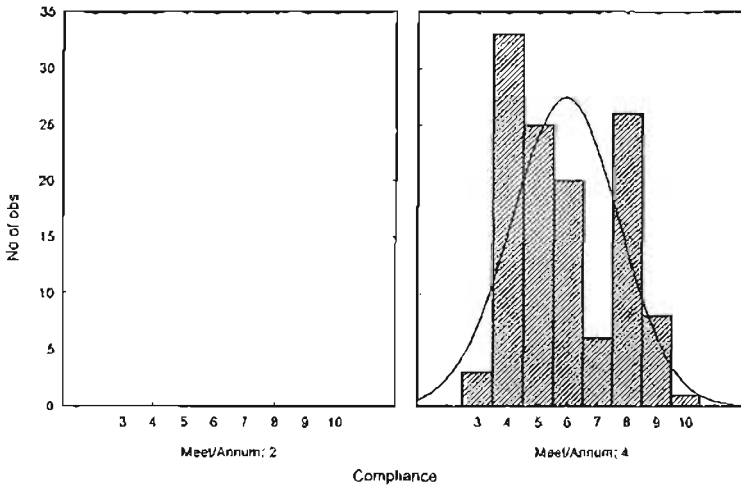


2-Way Tables of Descriptive Statistics (RETIREMENT FUND GOVERNANCE SUR			
Smallest N for any variable: 122			
CPOrigin	Compliance Means	Compliance N	Compliance Std.Dev.
Emp-e: Employee	5.690476	84	1.742289
Emp-er: Employer	6.315789	38	1.787422
All Grps.	5.885246	122	1.773062

Analysis of Variance (RETIREMENT FUND GOVERNANCE SURVEY DATA1.sta)								
Marked effects are significant at p < .05000								
Variable	SS Effect	df Effect	MS Effect	SS Error	df Error	MS Error	F	p
Compliance	10.23054	1	10.23054	370.1629	120	3.084691	3.316551	0.071077

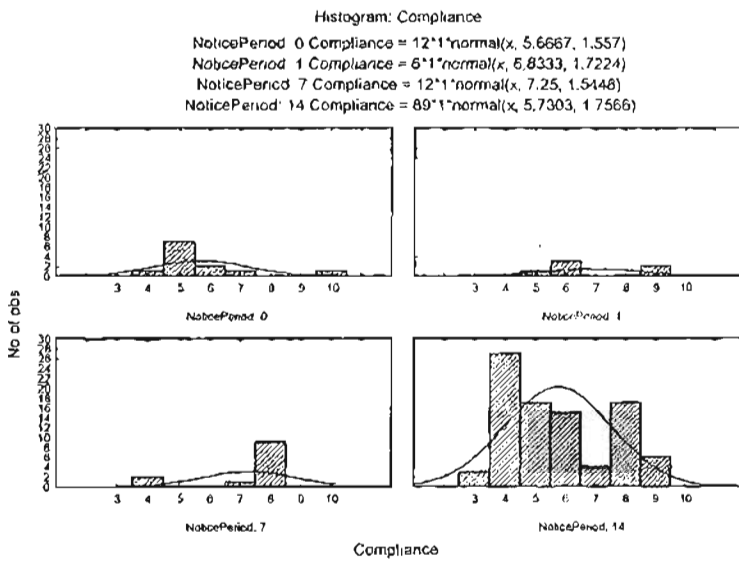
Histogram: Compliance

Meet/Annum: 2 Compliance = Fit not drawn because of invalid range of values  
 Meet/Annum: 4 Compliance = 122\*1\*normal(x, 5.8852, 1.7731)



2-Way Tables of Descriptive Statistics (RETIREMENT FUND GOVERNANCE SURVEY C Smallest N for any variable: 122)			
Meet/Annum	Compliance Means	Compliance N.	Compliance Std.Dev.
2		0	
4	5.885246	122	1.773062
All Grps	5.885246	122	1.773062

Analysis of Variance (RETIREMENT FUND GOVERNANCE SURVEY DATA1.sta) Marked effects are significant at p < .05000								
Variable	SS Effect	df Effect	MS Effect	SS Error	df Error	MS Error	F	p
Compliance	0.00	0		380.3934	121	3.143747	0.00	



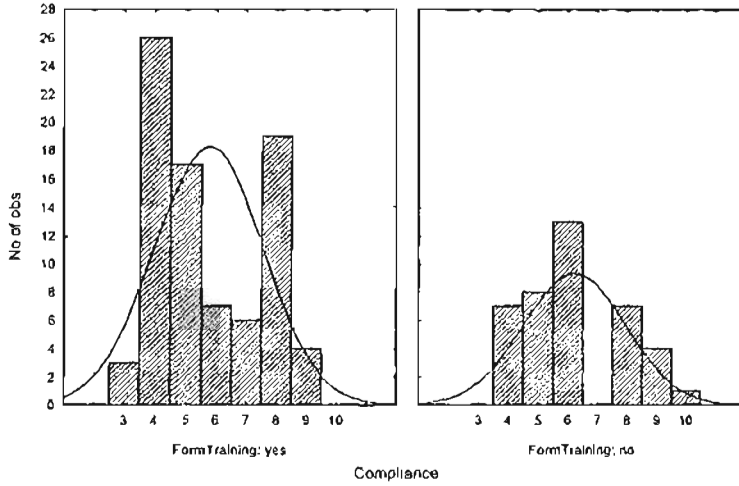
2-Way Tables of Descriptive Statistics (RETIREMENT FUND GOVERNANCE SURVEY C Smallest N for any variable: 119)			
NoticePeriod	Compliance Means	Compliance N	Compliance Std.Dev.
0	5.666667	12	1.556998
1	6.833333	6	1.722401
7	7.250000	12	1.544786
14	5.730337	89	1.756572
All Grps	5.932773	119	1.769473

Analysis of Variance (RETIREMENT FUND GOVERNANCE SURVEY DATA1.sta) Marked effects are significant at p < .05000								
Variable	SS Effect	df Effect	MS Effect	SS Error	df Error	MS Error	F	p
Compliance	30.18409	3	10.06136	339.2781	115	2.950244	3.410350	0.019945

Highest compliance when the notice period is 7 days.

Histogram, Compliance

FormTraining: yes Compliance = 82\*1\*normal(x, 5.7317, 1.7919)  
 FormTraining: no Compliance = 40\*1\*normal(x, 6.2, 1.7127)

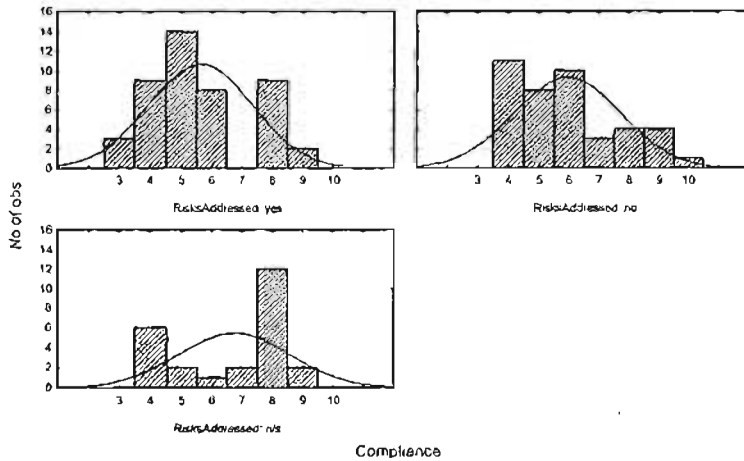


2-Way Tables of Descriptive Statistics (RETIREMENT FUND GOVERNANCE SURVEY C)			
Smallest N for any variable: 122			
FormTraining	Compliance Means	Compliance N	Compliance Std.Dev.
yes: YES	5.731707	82	1.791949
no: NO	6.200000	40	1.712698
All Grps.	5.885246	122	1.773062

Analysis of Variance (RETIREMENT FUND GOVERNANCE SURVEY DATA1.sta)								
Marked effects are significant at p < .05000								
Variable	SS Effect	df Effect	MS Effect	SS Error	df Error	MS Error	F	p
Compliance	5.895882	1	5.895882	374.4976	120	3.120813	1.889213	0.171852

Histogram, Compliance

RisksAddressed: yes Compliance = 45\*1\*normal(x, 5.6222, 1.8827)  
 RisksAddressed: no Compliance = 41\*1\*normal(x, 5.9268, 1.752)  
 RisksAddressed: n/s Compliance = 25\*1\*normal(x, 6.72, 1.8376)





2-Way Tables of Descriptive Statistics (RETIREMENT FUND GOVERNANCE SURVE Smallest N for any variable: 111			
RisksAddressed	Compliance Means	Compliance N	Compliance Std.Dev.
yes: YES	5.622222	45	1.682651
no: NO	5.926829	41	1.752002
n/s: NOT SURE	6.720000	25	1.837571
All Grps.	5.981982	111	1.778569

Analysis of Variance (RETIREMENT FUND GOVERNANCE SURVEY DATA1.sta) Marked effects are significant at p < .05000								
Variable	SS Effect	df Effect	MS Effect	SS Error	df Error	MS Error	F	p
Compliance	19.56570	2	9.782849	328.3983	108	3.040725	3.217276	0.043933

Highest

## **CHAPTER FIVE.**

### **RECOMMENDATIONS AND CONCLUSIONS**

#### **5.1.Fund Administration.**

On the whole trustees seem to be complying with guidelines as set by the Financial Services Board. However, what is disappointing is that the majority of the respondents could not quantify the extent of their administrator's fidelity and indemnity cover.

The Pension Funds Act is vocal in this regard in that it requires that an adequate indemnity and professional negligence cover be maintained by the fund's administrator. The purpose of this cover is to ensure that any losses incurred directly as a result of mal-administration are adequately covered. This survey enquired as to the extent of the cover taken out by the administrator and disappointingly the majority of the trustees did not know anything about it.

This indicates that there's still some work that needs to be done as far as trustee orientation and training is concerned.

## 5.2. Board of Trustees.

Contrary to the general perception that there is a high degree of employer influence over funds, there is an indication that the employees are the ones with more influence. Although the chairmanship is alternating between the employer appointed and employee elected trustees from year to year, the survey shows that the employee elected trustees generally occupies it (chairmanship). This can be attributed to the labour movement activism that is prevalent in our country.

It is good governance for trustees to seek external assistance in fulfilling their duties and our survey shows that overwhelmingly the majority of funds neglect the appointment of independent trustees.

With the change in the composition of the trustee boards, trustee training is becoming more and more important. With the survey I noted that the majority of funds do provide some formal training, however there are areas like investments that still need more emphasis.

There are major risks that the respondents identified, and these are the following:

- Poor investment performance and market volatility.
- Administrator's systems and administration problems.
- Poor governance and its consequences.
- Lack of investment related experience by trustees and the consequent over reliance on advisors.
- Poor quality of data and information
- The "sweeping" HIV/AIDS

Disappointing though is the fact that when asked if identified risks are addressed, the majority of the respondents indicated largely that the risks were not addressed or they were not sure and some did not respond at all.

Identified risks need to be addressed as soon as possible before they become insurmountable problems.

Emphasis once again should be put on trustee training and workshops where Circulars could be discussed and commented on.

### **5.3. Legal Compliance.**

Respondents rated their funds 6 out of 10 which is contrary to industry belief that compliance could be a low of 2 or 3 out of 10 even as perceived by most trustees. However, the limitation here is that I could not verify these responses.

Most funds surveyed did not comply with the requirements of Section 13A and the requirements governing the submission of rule amendments.

Section 13A states that “ Notwithstanding any provision of the rules of a registered fund to the contrary, any contribution payable in respect of any member of the fund to the fund shall be paid directly to the fund by or on behalf of the member within a period of seven days after the expiration of the period in respect of which the contribution is being paid, and the board shall, not later than the first business day following the day on which the fund received the contribution, deposit the contribution in the name of the fund with an institution registered under the Banks Act of 1965...”

Respondents did raise some concerns with regards to the length of time taken by the FSB to provide approval for rule amendments. Action is needed in this area especially given the Pension Adjudicator’s intention to rely on registered rules when making decisions.

This sub question was prompted by my own experiences with rule amendments submitted with the FSB.

### **5.4. Investment matters.**

The board of trustees is ultimately responsible for the fund’s investments. In order to demonstrate effective and prudent investment management, trustees should formulate a suitable investment strategy for the fund, select appropriate fund managers, provide clear mandates to those fund managers and monitor investment performance against predetermined and appropriate benchmarks.

The results of this survey were quite disappointing with the majority of the respondents saying their funds do not comply with regulation 28, not familiar with GIBS, fund's investment strategy not formally documented and the fund's strategy not communicated to members.

Regulation 28 is concerned with limits relating to assets in which a Registered Fund may invest.

This is a serious shortcoming and the industry players should really come up with remedies.

Training is one crucial aspect of consideration to this end. Here I'm referring to the initial and ongoing training by professional trustee trainers.

Initiatives like the one spearheaded by Old Mutual Actuarial Consultants (OMAC) where these shortcomings are identified and customized training provided should be commended. I think there is indeed still a great deal of work that needs to be done in so far as retirement fund governance is concerned in South Africa.

There are some issues that the FSB needs to be jerked up on (like rule amendments turn around times) and may be some sections of the Pension Funds Act need to be revisited in order to tighten up the funds governance.

I think a more comprehensive survey by pioneers (in the customized trustee training area) like Old Mutual needs to be done, especially in three years to see the effects of their initiative on retirement fund governance as a whole. I would also recommend a larger sample for a follow up survey.

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Rossouw H.I: Regional General Manager- Old Mutual Employee Benefits

Yeo D: Compliance Officer- Old Mutual Employee Benefits.

Stephenson R : Legal Consultant, Old Mutual Employee Benefits

## APPENDICES

### THE CAF CASE

A recent case of special interest for governance and compliance in the retirement fund industry is the case of Mostert NO v Old Mutual Life Assurance Company (South Africa) Ltd - Case No 16402197, CPD. The salient facts were as follows:

1. From its inception in 1958, the CAF Pension Fund operated exclusively by means of policies of insurance issued by Old Mutual to the Fund's Employer (initially Moores SA (Pty) Ltd) who ceded its rights, title and interest in the original policy to Addressograph- multigraph SA (Pty) Ltd (later known as AM International South Africa (Pty) Ltd and AMK Technologies (Pty) respectively).
2. Throughout Old Mutual's involvement with the Fund, the Fund had no trustees and all instructions pertaining to the Fund emanated from the Employer. The last policy in terms of which Old Mutual rendered administrative, actuarial and investment services in respect of the Fund, was issued to the Employer and provided that either the Employer or Old Mutual could terminate Old Mutual's aforesaid services by giving the required notice.
3. During April 1994, after Laurie Korsten had obtained all the shares in the Employer from its US parent company, the Employer terminated Old Mutual's administrative and actuarial services and appointed Van der Linde De Villiers (Pty) Ltd as administrators and Gert van der Linde as actuary for the Fund.
4. As a result, Old Mutual and the Employer considered Old Mutual's contractual obligations regarding the drafting and registration of rule amendments to have been terminated. As the rules of the Fund still provided that the Fund should operate on a deposit administration basis with Old Mutual, Van der Linde's appointment necessitated a rule amendment. It was generally accepted practice that the new benefits administrator would be responsible for drafting and registering such amendments (Van der Linde, in fact, did advise the Registrar of his appointment and that new rules were being drafted).
5. During May 1994 Van der Linde gave Old Mutual notice of the Employer's intention to terminate Old Mutual's investment services and in November 1994 he copied Old Mutual with a letter from the Employer, signed by its managing director, Laurie Korsten, to effect payment of the proceeds of the policy to CAF (Pty) Limited, being the new investment manager appointed by the Employer. Old Mutual paid the proceeds over in accordance with the Employer's instructions and subsequently had no further involvement with the Fund.

6. It was only during 1997/98 that Old Mutual learnt that:

- Van der Linde only submitted new rules for the Fund during May 1995 (due to difficulties encountered in getting L.Korsten's approval), which were registered on 19 June 1995, with retrospective effect from 1 March 1995 (and not 1 May 1994, due to an error on the part of Van der Linde);
- In terms of these rules the management of the Fund vested in three Trustees of the Fund appointed by the Employers, being Jan and Laurie Korsten and Riaan Els.
- CAF (Pty) Ltd (a company also controlled by Laurie Korsten) remained the investment manager of the Fund until the Fund was placed under curatorship during 1997. Although the Registrar did give permission for a loan from the Fund to AMK Technologies, in the amount of R 3.6 million, CAF (Pty) Ltd loaned almost all the monies which it had to invest to the said company and another company, Korfinans. The major portion of such loans was effected subsequent to the registration of the rules in June 1995. The aforesaid three companies were all liquidated in 1997.

During December 1997 the curator instituted action against Old Mutual for damages suffered by the Fund. Having regard to these facts Old Mutual was of the view that it was not remiss in its actions and not responsible for the losses suffered, which view was confirmed by its attorneys and counsel, and therefore Old Mutual defended the action.

The Cape High Court last year dismissed the claim of the Fund on the basis that Old Mutual did not cause the damage suffered by the Fund. The Court held that Old Mutual was not responsible for the losses of the Fund occasioned by the loans to the "Korsten" companies and that, in terms of the evidence led in the course of the trial, such losses would in all probability have been incurred even if Old Mutual had insisted upon rule amendments and a fund account prior to effecting payment.

On appeal the Supreme Court Appeal, however, ruled that Old Mutual should pay the Fund's full claim because the directive from the Employer was not valid as the Fund had been exempted and its rules provided for it to be underwritten by Old Mutual. Smallberger J held as follows:

" A Pension Fund, its legal status, and the rights and obligations of its members and the employer, are governed by the Fund rules, relevant legislation and the common law (TEK Corporation Provident Fund and Others v Lorentz 1999(4) SA 884(SCA) at 894 B-C). The Rules amount to the fund's constitution (Abrahamse v Connock's Pension fund 1963(2) SA 76(W) at 78D-E)." [At 30]

" It is one thing to give amended rules retrospective effect after registration; it is something entirely different to seek to give them binding effect before registration". [At 60]

" The provisions of the Act regarding the filing, registration and effect of rules are perfectly clear, as is also their purpose. There is no basis whatsoever for contending that these provisions have been repealed or were entitled to be ignored because of some practice." [At 71]



The Court also held that none of the amounts paid over to CAF (Pty) Ltd, including approximately R23 million transferred by CAF (Pty) Ltd into bank accounts in the name of the Fund, was effectively under the control of the Fund.

The Supreme Court of Appeal judgment, however, did not order a fixed sum to be paid and there was a significant difference of opinion about the sums involved. The order was that Old Mutual had to pay the policy benefits together with the legal interest rate of 15.5%. From this had to be deducted "all amounts recovered to date by the plaintiff on behalf of the CAF Pension Fund, interest to be adjusted accordingly from the date of each such recovery".

The difference arose around the following points:

- The schedule of recoveries provided by the curator reflected an amount of only R6 million recovered on behalf of the Fund prior to 8 April 1997, while a certificate issued by the curator's auditors and incorporated into an affidavit made by him, reflected an amount of R16 million recovered on behalf of the fund up to that date;
- The method of interest computation: the different methods used by the curator and Old Mutual's external legal advisers resulted in a difference of over R7 million.
- The Korsten's had also waived their rights to a pension, an amount of nearly R7 million that the curator refused to give credit to Old Mutual for.

## APPENDIX B.

# RETIREMENT FUND GOVERNANCE IN SOUTH AFRICA

### INSTRUCTIONS.

**Please answer the following questions regarding your fund.**

**Please note:** Answer yes or no where needed but also indicate if not sure about the answer. Where you are required to give a number on a scale of 1-10, note that 1 represent the worst scenario, 5 the average and 10 the best scenario. But if you don't know the answer please leave the question blank. The same applies to those questions that require percentages.

#### **Fund Administration.**

1. Does your Fund have a documented Service Level Agreement in place with the administrator?
2. Is the administrator's performance monitored on a periodic basis against predetermined criteria?
3. Were the Fund's annual financial statements for the last 3 years submitted to the FSB within the prescribed 6 months period.
4. What is the level of your administrator's indemnity and professional negligence cover?

#### **Board of Trustees.**

5. What is the number of trustees constituting the board?
6. How many independent trustees are in your board?
7. What is the origin of your chairperson, is he/she from the employer or employee trustees?
8. How many trustee meetings are held per annum?
9. What is the number of days notice for trustees meetings that board papers are circulated?
10. Is formal training provided to trustees?
11. Does the Fund have a formally documented code of ethics?
12. Are identified risks being addressed? Does your Fund have a trustee fidelity cover?

**Legal Compliance.**

13. Do you fully understand and appreciate your Fund rules?
14. Rate your Fund's regulatory compliance on a scale of 1-10.
15. What is the percentage of contributions not received by the Fund in compliance with Section 13A? (Any FSB concerns in this regard?)
  
16. What is the percentage of rule amendments submitted to the FSB within the 60 day prescribed period?

**Investment matters.**

17. What is the composition of the investment sub-committee?
18. Is your Fund's investment strategy formally documented?
19. On a scale of 1-10, what is the level of involvement of trustees in setting the investment strategy?
20. Is the Fund's investment strategy communicated to members?
21. Are you familiar with investment performance standards?
22. Did your Fund comply with regulation 28 at the last year-end?

**General.**

Identify the major risks that your fund's trustees are faced with.