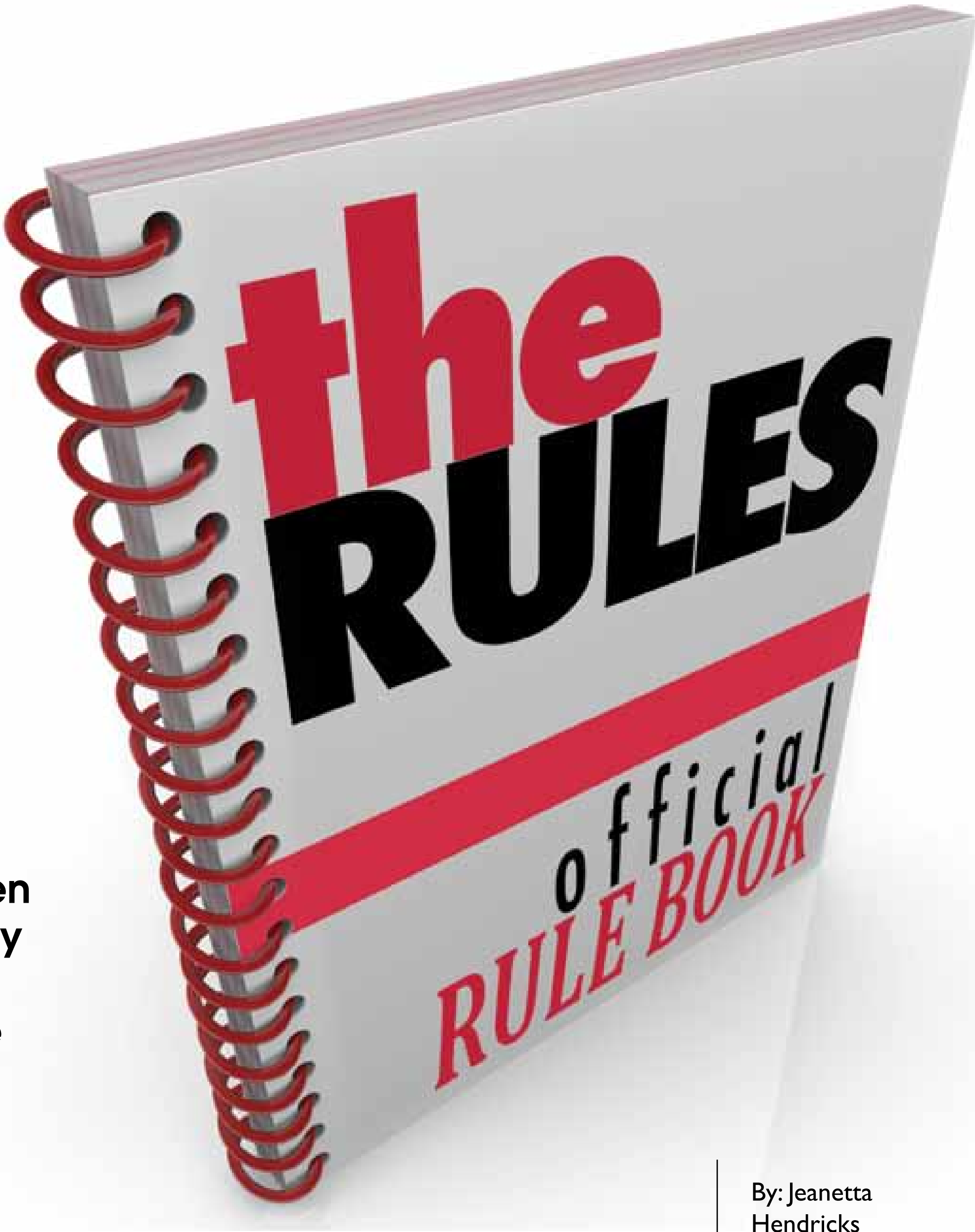
change rules?



Amidst Government's attempts to promote increased savings and improve fund preservation, through the enactment of its retirement reform, one important area within the ambit of the broader Pension Fund regulatory framework has, unfortunately, been overlooked: Beneficiary Fund regulations and governance should be as unique as the funds themselves.

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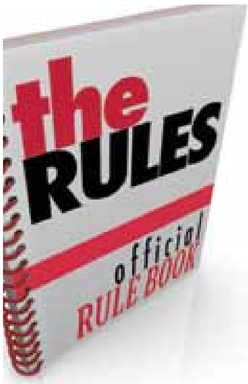
Beneficiary Funds, a uniquely South African phenomenon born out of unique circumstances, have their own special elements that are not entirely aligned with the Pension Funds Act that currently governs them, and this has been largely overlooked at Government level during the reform process.

The major concerns currently are that no regulation exists governing pay-out processes; there are no firm guidelines to aid trustees in making decisions that affect funds; and there are no rules around due diligence practices.

For example, when a minor reaches the age of majority there is currently no regulation that stops them from withdrawing the full value of the fund benefit. This practice is certainly not



aligned with the retirement reform proposed by Government regarding fund preservation, which was scheduled to come into effect on 1 March 2015, but has been delayed to 1 March 2016, or later.

As such, the industry is looking for clarity as to whether these issues will be addressed as part of the broader reform process going forward. And these issues certainly need to be addressed if the industry is to ensure the best outcomes for Beneficiary Funds and, ultimately, to improve the lives of Beneficiaries – those who require expedient action to ensure ongoing financial support following the loss of a parent or primary breadwinner.

This is a concern that has been noted and acknowledged by the adjudicators of a plenary session at the recent Batseta conference that Beneficiary Funds require their own set of rules. Certainly, by housing Beneficiary Fund regulations outside those of generic Pension Funds the industry would be better equipped to manage the unique circumstances faced when dealing with beneficiaries and their guardians.

To be more specific, trustees are, first and foremost, tasked with meeting the social mandate of these funds; to ensure that beneficiaries do not become dependent on the state or destitute following the loss of primary financial provider of a household. With that mandate in mind, trustees require regulated guidelines or directives to adjudicate in the best interests of the beneficiary. Currently trustees rely on industry best practices and value judgements to make a determination on who qualifies as a beneficiary, and in making a fair and equitable distribution of funds. This can be a highly subjective process at present, one that is often fraught with difficulty.

Furthermore, clearer regulations and guidelines are required to assist trustees in determining when power vests to the guardian, who then has sole control over the funds. Currently trustees cannot deny a guardian the right to manage these funds without just cause. Common law also trumps a decision by the board of trustees, which is why the court often rules in favour of the guardian when the issue reaches the adjudicator's office. However, as there is a lack of adequate regulation to govern how guardians manage and invest this money there is often no assurance that the funds will be used to benefit the dependants.

Even if the guardian has the best of intentions and the interests of the beneficiary in mind, the beneficiary's money may still be vulnerable due to myriad factors. For instance, guardians are seldom able to deliver the same returns on funds that professional institutionalised investors can achieve, and without adequate estate planning in place, the beneficiary's money is not ring-fenced against loss to creditors or other claims against the guardian's estate.

Additional considerations in terms of Beneficiary Fund reform should include a review of the provider landscape. Many financial service providers have entered the market as a means to expand their revenue streams. However, many do not have the expertise and experience required to manage the complexities of Beneficiary Funds nor meet the social mandate of these funds. The care of minors and the financially vulnerable cannot become a commoditised revenue spinner. It requires experts in the field who are also concerned with the delicate duty of care required in the management of these matters. In the same vein, provider costs should also be regulated. While they may look similar on the surface, on application it becomes clear that hidden costs start to eat into the principal sum thereby reducing the impact this money has for the on-going benefit of the beneficiary. Tracing beneficiaries is also a specialist practice and when it relates to replacing the lost income of a primary breadwinner, time is of utmost importance. There is a definite need for guidelines and regulations that force providers to trace beneficiaries within a specific timeframe as there is currently no incentive for providers to pay out the money as quickly as possible.

There can be no denying that a Beneficiary Fund is different to a Pension Fund. Yet, despite falling within the same regulatory framework, they are often not treated in the same way. If Beneficiary Funds are going to be part of the broader retirement reform that currently affect Pension Funds then the 'golden thread' of reform needs to be pulled through. This will help to preserve funds for the long-term uplift of beneficiaries and will ensure that the industry can achieve its social mandate, particularly when coming up against common law and the roles and responsibilities of guardians. ∞