

18 July 2011

Dear Client

## **DEVELOPMENTS REGARDING THE OVATION FUNDS**

The purpose of this letter is to provide you with an update on the funds.

### **The History**

I am going to take the time to deal with the history as it is relevant in light of the latest developments and the issues which have arisen as a result of the fraudulent conduct committed within the orbit of Ovation Global Investment Services (OGIS), the previous administrator of the Ovation Funds, and Ovation Global Investment Nominees (OGIN), its nominee company, both of which were placed under curatorship in March 2007. The funds themselves were not placed under curatorship and subsequently a new administrator, EFS, was appointed. EFS was purchased by PSG Asset Management (PSG AM) on 1 May 2011.

There were two sets of losses sustained by the members of the funds:

#### **The Common Cents Losses**

The first were the so called Common Cents Losses. Without going into the detail of the losses, R19.9 million was stolen from a portfolio in which 348 members had chosen to invest the assets of the funds attributable to them. These losses have been borne at member level, i.e. the losses have been allocated to the members who chose to invest in the Common Cents Portfolio (also known as the Ovation Cash portfolios) managed by Common Cents Investment Portfolio Strategists (Pty) Ltd. The curators of OGIS have instituted action against ABSA for the recovery of the amounts stolen. This action is still pending. Should any recovery be made it will be for the benefit of those members.

#### **The Disappointed Investors**

The losses of the Disappointed Investors arose from a different cause. They were the investors whose funds had been transferred or swept into the OGIN bank account but had not yet been invested in any financial products or the OGIS LISP platform. While the monies were in the OGIN bank account, they were stolen prior to being invested. In total R13.3million were stolen from 348 members across the various funds.

### **Subsequent Investigation by the Trustees**

The previous trustees of the funds were faced with a decision as to how to correctly treat the two categories of members who sustained losses. They consulted with the FSB and obtained legal opinion from senior counsel on the matter.

The advice was that in the case of the Common Cents losses, that there was no basis in law to divide the loss suffered by the Common Cents Investors pro rata amongst all the members of the Ovation Funds and that the loss is to fall on the members who chose the investment which failed. Essentially the losses were a capital loss in the portfolio and as the rules required portfolio gains and losses to be allocated to each member's share of the fund, the loss was allocated at member level.

However the opinion was different in the case of the Disappointed Investors. These members had not yet made a choice on the underlying investment or, where they had made a choice, that choice had not yet been executed. Therefore the loss of these investors was determined to be a loss suffered by the fund which should be borne by the fund and thus spread across all members.

### **The Rule amendment**

To give effect to the advice obtained, a rule amendment was drafted and submitted to the FSB for approval. This rule amendment was approved by the FSB last week having the effect of endorsing the opinion obtained.

The implication of this is that a debit will have to be made against all members' fund values as at 2 March 2007. This debited amount will then be placed into a contingency reserve account to meet the possible claims of the "Disappointed Investors". The anticipated debit to be made on average across the Ovation Retirement Funds is likely to be no more than 2%.

## **The Process**

Now that the rule amendment has been registered, the following process will be followed:

- The quantum of the reserve account will be determined and signed off by the valuator;
- Once determined this amount needs to be confirmed and approved by the trustees;
- The administrator will then amend client records accordingly;
- The curator retention amounts will be allocated to members and signed off by the valuator;
- Thereafter should a member wish to do a section 14 it can be submitted to the administrator.

It is estimated that this process will take 3 months. Please be assured that we will do our utmost not to delay the process.

## **Retention Amounts of the Curators**

When OGIS and OGIN were placed under curatorship, some monies from the funds were retained to cover the cost of curatorship. There have been subsequent releases of the retention amount, which have not been allocated to members accounts, due to the fact that the treatment of the Disappointed Investors and the rule amendment were not finalised. The reason why this impacted on the allocation of the retention amount is that part of the rule amendment permits the fund to deduct from retention amounts to be paid to former members, i.e. members who have left the funds, in order that they share in the losses of the Disappointed Investors which are to be spread across the fund. These unallocated retention amounts are currently invested in an RMB Money Market Account and will be allocated to members as part of the process set out above.

## **Update on litigation**

Over the last few years there were a number of legal actions taken by the previous trustees. The only legal actions pending are the following:

- The Curators vs. ABSA: Recovery of the Common Cents Losses. The members and the trustees are not involved in this litigation, however should it be successful, any benefit will be for the account of the Common Cents Investors who sustained the losses;
- The Ovation funds vs. Santam Ltd: The previous trustees instituted action against Santam (the funds' insurers). The action relates to the "Retirement Fund Trustees Fidelity and Errors and Omission Policy" and is for the losses suffered by the funds flowing from the theft by Cruickshank as well as the resultant curatorship costs. Discovery has taken place and application has been made for a trial date. The newly appointed trustees are in the process of investigating the prospects of success of the litigation and will make a decision whether to proceed with the action in the next month. All stakeholders will be advised of the results of the investigation.

## **Other changes by the new Shareholders**

There are a large number of funds on the Intervest Platform wherein a very small amount is invested. There is also a great deal of duplication in the classes of funds offered.

We are busy with a process, in consultation with the trustees, that will result in a more limited but more appropriate offering and a communication in this regard will be sent to all affected parties in the next month.

In the interaction with members and advisors PSG AM has committed to keeping advisors and members informed. This communication is the first in this regard and regular communication will follow.

Should you have any further queries, please do not hesitate to contact us on 0860 22 33 33.

Regards



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**PSG Asset Management Administration Services**