1. This is a complaint lodged with the Pension Funds Adjudicator, relating to alleged time delay of the fund in carrying out the complainant’s instruction to switch his pension fund portfolio. The complainant claims to be entitled to damages for the loss he incurred as a result of the delay. No hearings were conducted and therefore, in determining this matter, I have relied on the documentary evidence and the investigation conducted, under my supervision, by my investigator, Lisa Shrosbree.

2. The complainant became a member of the Superflex Preservation Fund ("the fund"), the first respondent, administered by Multirand Investment Solutions Limited, the second respondent, on 1 November 1994.

3. On joining the fund, a member has to select the portfolios out of the range of portfolios offered by the fund in which he or she wants to invest up to a maximum of five investment portfolios. The member must then decide on the amount to be allocated to each portfolio. Separate accounts are then maintained for each portfolio.
4. Rule 2.1 of the rules reads:

Subject to the approval of the Trustees, a Member will be allowed to realize the whole or part of the units held in an investment portfolio held by him and to have this re-allocated to another investment portfolio within the Fund on such terms and subject to such conditions as decided by the Trustees; provided that the investment held by the Member shall, at all times, comply with any conditions governing investments laid down in terms of the Act.

5. In terms of the above, a member is entitled to switch from one portfolio to another. In that event, the member is required to complete a switch request form indicating his revised investment selection and the portfolio from which he would like his monies to be disinvested.

6. It is common cause that on 10 February 2000, the complainant faxed through a completed switch instruction form to Multirand indicating that he wanted R900 000 of his monies which were invested in various unit trust portfolios to be transferred to the Superflex Banker Portfolio, a cash portfolio.

7. Multirand effected the switch five days later on 16 February 2000. In the period 11 February 2000 to 16 February 2000, the market dropped dramatically as a result of which the complainant’s funds were depleted by approximately R35 965. It is common cause that had the complainant’s funds been switched to the Superflex Banker Portfolio on 10 February 2000, they would have been sheltered from the fall in the market.

8. The complainant argues that Multirand owed a duty to him to effect the transfer on the same day as the instruction to switch was received; that it breached that duty as a result of which he has suffered loss of R35 965.
9. The complainant’s request for relief is that the switching transaction be backdated to 10 February 2000. The effect of this would be that Multirand would be liable to pay the complainant the sum of R35 965, the loss he incurred as a result of his funds remaining in the unit trust portfolios for the five-day period in question. The complainant refers to the experience of some of his colleagues who have had switches effected on the same day as the instruction was given. He asserts that it is unfair that members are not all treated in the same way.

10. The question is whether the complainant has any basis for his claim. Rule 2.1 clearly states that a member may switch portfolios on such terms and subject to such conditions as decided by the trustees.

11. The rule thus permits the trustees to attach terms and conditions to the switching process. The terms and conditions decided upon by the trustees are listed on the switch request form under the heading “Important Notes” and read as follows:

- Switches from Unit Trusts and Investment Solutions should be finalized within 5 working days from receipt of the switch instruction. The switch instruction must reach us before 11h00. [My italics]
- The following fees will apply to unit trust and Investment Solution switches:
  - Switching within a Unit Trust Management Company – no fee except for statutory costs
  - Switching between a Unit Trust Management Company – 0,25% plus VAT plus statutory costs
  - Switching within and between Investment Solutions portfolios – no fee
  - Where clients have invested in the Guaranteed portfolio, switches can only be effected twice a year on 01 January and 01 July and require 4 months notification to these dates.
  - Where clients have invested in individual policies with Old Mutual and/or Sanlam, the surrendering/switching of your policy/policies may prejudice potential rights to free shares that may accrue to you from the intended
demutualisation. Should you decide to continue with the surrender/switch, please note that Alexander Forbes will not be held liable for your decision to switch/surrender the individual policy

- Switch request forms may be faxed to (011) 253 1227

12. The above gives the cost implications for the various switches, time periods and special provisions applicable to certain switches.

13. The turn around period is the first point in the notes. It gives a period of five working days within which a switch should be finalized. This use of the word “should” implies that not even the five-day turn around period is guaranteed. Thus even if Multirand does not effect a switch within five days, it is not necessarily in breach of its duty to members, provided the delay is shown to be reasonable. However, this is not relevant for present purposes, since the switch was effected within the five day period.

14. In terms of rule 2.1, the trustees were entitled to attach terms and conditions to the switching portfolios. One such condition was a five-day turn around period. The complainant was or ought to have been aware of this condition attached to switches as it appeared on the switch request from which had to complete and sign every time he switched portfolios.

15. Multirand therefore fulfilled its duty to the complainant by effecting the switch to the Banker Portfolio within five days and the complainant therefore has no basis for his claim.

16. The complainant’s point that some switches are actioned within a shorter period, sometimes on the same day as the instruction is received, is not relevant for the purpose of determining the extent of Multirand’s duty to the complainant. Multirand states that this is sometimes possible when monies are switched within the same management company. However this is also dependent on the volume of business received on a particular day, system
capabilities and so on. The provision in the notes on the switch request form should however have alerted the complainant to the fact that he had to make special arrangements to expedite a switch.

17. For the foregoing reasons, the complaint is accordingly dismissed.

DATED at CAPE TOWN this 10th day of APRIL 2001.

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JOHN MURPHY
PENSION FUNDS ADJUDICATOR