

Our reference: MF001/LAW/19

30 April 2019

TO: **Tito Titus Mboweni**
Per: Mary Marumo
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CC: **Ismail Momoniat**
Per: Noeline Scholtz
Email: Noeline.Scholtz@treasury.gov.za

Dear Mr. Mboweni,

1. Open Secrets is a non-profit organisation dedicated to investigating and pursuing accountability for economic crimes and related human rights violations. Consequently, an important aspect of our work includes holding the financial sector accountable. The Financial Sector Conduct Authority (FSCA) is an important actor in this regard.
2. The FSCA acts as the oversight body for the financial sector, whose conduct has far-reaching consequences for ordinary citizens. The independence and transparency of the FSCA is a particularly crucial safeguard of its ability to act in the public interest, despite pressure from a powerful and well-resourced business sector. The FSCA has accordingly recognised that its primary duty is to the ordinary people of South Africa.
3. The FSCA is the first regulator of its kind in South Africa, with a specific mandate to scrutinise the market conduct of actors in the financial sector, and ensure that customers are treated fairly. Its creation was part of the 'Twin Peaks' approach to financial regulation which recognises the importance of a dedicated market conduct regulator.
4. Bearing in mind the crucial role that the FSCA plays, we write concerning the appointment of the Commissioner and Deputy Commissioner of the FSCA.
 - 4.1. Currently, a Transitional Management Committee (TMC) has been established, and its members appointed by the Minister of Finance on 1 April 2018.

- 4.2. According to the Financial Sector Regulation Act No 9 of 2017, a new Commissioner was meant to be appointed within six months of the establishment of the FSCA, in April 2018.
 - 4.3. An advert for the position of Commissioner and Deputy Commissioner was publicised in 2018 with a deadline for applications set at 21 May 2018.
5. We are concerned that there has been an excessive delay in the appointment of a Commissioner of the FSCA, which potentially has a destabilising effect on this essential regulator. In addition to this concern, we are concerned about the apparent conflict of interest within the current TMC. This is because:
- 5.1. The Public Protector has released a report on the conduct of Advocate Dube Tshidi, a member of the TMC, which contained negative findings against him, including of maladministration and abuse of power. While this report is under review, there is nonetheless at the very least a perceived bias in Advocate Tshidi being in a position of power and influence on an oversight body such as the FSCA. This is particularly so when his appointment occurred without any public participation processes, and against the backdrop of other scandals such as the Financial Services Board's pension "Cancellations Project" which was overseen by Advocate Tshidi in his capacity as Registrar of Pension Funds.¹
 - 5.2. Moreover, the instability of a prolonged 'transitional period' means that oversight and accountability functions of the FSCA are compromised.
6. In light of the fact that the FSCA is a regulatory body that acts in the public interest, and the public nature of the roles of the Commissioner and Deputy Commissioner, we request your response to the following questions:
- 6.1. By when will the Minister of Finance appoint the Commissioner and Deputy Commissioner of the FSCA?
 - 6.2. Has a Shortlisting Panel been established?
 - 6.2.1. If one has not yet been established, by when will such a panel be established?
 - 6.2.2. If one has been established:

¹ Between 2007 and 2013 the Financial Services Board ("the FSB", now the FSCA) undertook the 'Cancellations Project' to deregister 'dormant' pension funds ("the Cancellations Project"). During this period, 6757 pension funds had their registrations cancelled on the basis that the funds no longer had any assets, liabilities or members. However, it is common cause that the process was beset by irregularities, and that errors were made by both fund administrators and the FSB. This resulted in a significant number of funds being cancelled when they still had assets, liabilities, and members. This in turn meant that the beneficiaries to whom these cancelled funds were liable were left unable to claim their pensions. It should be noted that some of these beneficiaries are persons from vulnerable groups such as the elderly and orphans. At the time, Advocate Tshidi was the head of the FSB.

- 6.2.2.1. Where can we find the shortlisted candidates for both the Commissioner and Deputy Commissioner positions?
 - 6.2.2.2. Who was consulted in coming up with the shortlist of candidates?
 - 6.3. If a shortlist of candidates exists, has a Ministerial Panel been established?
 - 6.3.1. If a Ministerial Panel has been established, what public participation process are they using in their interviewing process?
 - 6.3.2. Have interviews taken place, and if so when was this done?
 - 6.3.3. If interviews have not taken place yet, will they be open to the public?
 - 6.4. In the appointing of the Commissioner and Deputy Commissioner of the FSCA, how is civil society being engaged and included in this process of great public importance?
 - 6.5. Will the candidates be vetted, particularly for fraud and corruption?
 - 6.5.1. If so, who will undertake the vetting process?
7. Kindly provide us with a response to the above by **14 May 2019**.

Please acknowledge receipt of this letter.

Yours sincerely,



Michael Marchant

Researcher: Investigations

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