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Ref: A Scher

**TO: TITO TITUS MBOWENI**  
Minister of Finance  
Per: Mary Marumo  
By email: [mary.marumo@treasury.gov.za](mailto:mary.marumo@treasury.gov.za); [minreg@treasury.gov.za](mailto:minreg@treasury.gov.za)

**COPIED TO: ISMAIL MOMONIAT**  
Deputy Director General: Tax and Financial Sector Policy, Ministry of Finance  
Per: Noeline Scholtz  
By email: [Noeline.Scholtz@treasury.gov.za](mailto:Noeline.Scholtz@treasury.gov.za)

**COPIED TO: MKHACANI JOSEPH MASWANGANYI**  
Chairperson: Standing Committee on Finance, Parliament of the Republic of South Africa  
Per: Arico Kotze; Allan Wicomb  
By email: [akotze@parliament.gov.za](mailto:akotze@parliament.gov.za); [awicomb@parliament.gov.za](mailto:awicomb@parliament.gov.za)

7 September 2020

Dear Honourable Minister Mboweni

#### **APPOINTMENT OF THE COMMISSIONER AND DEPUTY COMMISSIONER OF THE FINANCIAL SECTOR CONDUCT AUTHORITY**

1. We act on behalf of Open Secrets ("**our client**"). Our client is a non-profit organisation dedicated to investigating and pursuing accountability for economic crimes and related human rights violations. An important aspect of this work includes holding the financial sector accountable. The Financial Sector Conduct Authority ("**FSCA**"), being the oversight body for the financial sector, is an important actor in this regard.
2. We refer to our client's correspondences to your offices dated 30 April and 23 October 2019, which we attach hereto as **CALS 1** and **CALS 2**.



- 2.1. Those correspondences address various queries relating to the appointment processes for the Commissioner and Deputy Commissioner of the FSCA.
- 2.2. We are instructed that our client did not receive any response to those correspondences.
3. We nevertheless take note of the promulgation on 5 August 2020 of amendments to the Financial Sector Regulations in terms of the Financial Sector Regulation Act 9 of 2017 (“**the Regulations**”). The Regulations *inter alia* amend the rules relating to the appointment of public officials including commissioners of the FSCA.
4. Given this promulgation, we expect that the process for appointing new FSCA commissioners is imminent.
5. As detailed in our client’s letters, the importance to the public of the appointment of public officials such as the Commissioner and Deputy Commissioner of the FSCA is recognised in the Constitution, which mandates that such appointment processes be open and transparent in order to facilitate the accountability of public institutions and ensure that they act in the public interest.
6. In the circumstances, we are instructed to request the following information from your offices:
  - 6.1. Whether a Shortlisting Panel and Ministerial Panel have been established towards the shortlisting and interviewing of the candidates for FSCA commissioners respectively;
  - 6.2. If either such Panel has been established, what were the processes leading to that establishment;
  - 6.3. If neither such Panel has been established, by when will the Shortlisting Panel be established;
  - 6.4. Whether candidates for the FSCA Commissioner positions have been shortlisted by the Shortlisting Panel, and, if so, where can the short list and the candidates’ *curricula vitae* be accessed;
  - 6.5. Whether candidates for the FSCA commissioner positions have been interviewed by the Ministerial Panel;



- 6.6. What public participation process is the Ministerial Panel using or planning to use in the interviewing process; and
- 6.7. In the appointing of the FSCA commissioners, how members of civil society and the general public are being engaged and included in this process of great public importance.
7. The requested information seeks to establish whether the Ministry has made the necessary practical arrangements for the process for interviewing and appointing the FSCA commissioners to be accessible to members of the public and civil society, and to allow for their participation in that process.
8. Our client would like the appointment process of the FSCA commissioners to be conducted and resolved expediently, but also that it be done in a manner that is constitutionally compliant and in the broader interest of vulnerable South Africans.
9. We are therefore instructed to demand, as we hereby do, that you provide us with the requested information by close of business on Wednesday 16 September 2020. Should we not receive the requested information by then, we are instructed to proceed with an urgent court application to compel you to comply, and in doing so, to safeguard the transparency of the interview and appointment process.
10. Please do not hesitate to contact the author on the email address below if you have any queries.
11. We look forward to hearing from you soonest.

Yours faithfully,

Ariella Scher  
**Attorney: Centre for Applied Legal Studies**  
*[Unsigned due to electronic communication]*

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