

**PUBLIC SERVICE ACCOUNTABILITY MONITOR (PSAM) SUBMISSION
TO NATIONAL TREASURY
ON THE DRAFT CONDUCT OF FINANCIAL INSTITUTIONS BILL**

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INTRODUCTION

The Public Service Accountability Monitor (PSAM) makes this submission in response to the call to provide the National Treasury with comments on the second draft of the [Conduct of Financial Institutions \(COFI\) Bill](#). The submission examines selected sections and chapters in the draft bill and offers analysis and recommendations.

Kindly note that the PSAM has considered and endorsed certain portions of the joint submission prepared by Open Secrets and the Unpaid Benefits Campaign (UBC) which are referenced below. Please consider both submissions under the circumstances

CHAPTER 1: INTERPRETATION, OBJECTS AND APPLICATION

Section	Current formulation	Comment / suggested change
Preamble		See Open Secrets & UBC submission – PSAM endorses
PART 1 INTERPRETATION (1)	"complainant" means a person who submits a complaint, who has a direct interest in the agreement, financial product or financial service to which the complaint relates, or a person acting on behalf of a person referred to in paragraphs (a) to (f), and includes a— ... (e) member or member spouse of a pension fund, insurance group scheme (or other type of member-based product or scheme); or	Comment: The formulation ‘member spouse’ reads strangely. Is this intending to mean the member and beneficiaries of the pension fund, insurance group scheme etc? In its current formulation it excludes common law partners and beneficiaries such as children. Suggested change: member or beneficiary of a pension fund, insurance group scheme (or other type of member-based product or scheme);
	“commercial sponsor”: means a licensed financial institution that establishes a retirement fund, with the intention that the financial institution, or another financial institution within the same financial group, will provide financial products or financial services to the retirement fund, once established, or its members;	See Open Secrets & UBC submission – PSAM endorses.
PART 1 INTERPRETATION (1)	(b) in relation to a significant owner, requirements relating to— (i) honesty and integrity; (ii) good standing; and (iii) financial standing;	Comment: Does the term significant owner mean the same as beneficial owner? Is there a specific reason for the formulation being significant owner

		<p>as opposed to beneficial owner or significant beneficial owner?</p> <p>Suggested change: The Bill should include a definition of a ‘significant owner’.</p>
Part 1 INTERPRETATION (1)	<p>"potential financial customer" means a person who has— (a) applied to, or otherwise approached, a financial institution or a related party or representative of the financial institution to become a financial customer; (b) been solicited by a financial institution to become a financial customer; or (c) received advertising in relation to any financial product or financial service;</p>	<p>Comment: Is there a reason for describing the customer as a financial customer? Would it suffice to say customer? Are financial institutions permitted to have other lines of business that are not financial services? The implication of the definition may be to exclude certain types of customers from seeking recourse.</p> <p>Suggested change: "potential customer" means a person who has— (a) applied to, or otherwise approached, a financial institution or a related party or representative of the financial institution to become a customer; (b) been solicited by a financial institution to become a customer; or (c) received advertising in relation to any financial product or financial service;</p>
Part 1 INTERPRETATION (1)	<p>"representative" means any person, including a person employed by a representative, who performs an activity listed in Schedule 3 for or on behalf of a financial institution in terms of an employment contract or any other mandate or agreement, but excludes a person rendering a clerical, technical, administrative, legal, accounting or other service in a subsidiary or subordinate capacity, which service— (a) does not require judgment on the part of the latter person; or (b) does not lead a financial customer to any specific transaction in respect of a financial product in response to general enquiries;</p>	<p>Comment: This definition may be creating a loophole that may result in abuse, particularly part a - “does not require judgment on the part of the latter person”. We suggest the removal of the exclusion part of the definition.</p> <p>Suggested change: "representative" means any person, including a person employed by a representative, who performs an activity listed in Schedule 3 for or on behalf of a financial institution in terms of an employment contract or any other mandate or agreement.</p> <p>The PSAM echo the Open Secrets and UBC submission where they state: ‘Open Secrets and UBC are</p>

		<p>concerned at the exclusion of technical or other services from the general protections and standards that apply to representatives. This would effectively create a lacuna of accountability, protection of the public and application of the Bill to actors that form an integral part of the financial sector. Therefore, this exclusion is arbitrary. Open Secrets and UBC submit that these exclusions be deleted. However, we do think that it is reasonable to exclude persons responsible for administrative or similar functions.</p> <p>In addition: What would the test be for exercising judgment?’</p>
PART 1 INTERPRETATION (1)	Acts are defined in very specific manner throughout Chapter 1	Comment: What will be the implication of defining Acts in a very specific manner if the Act may later be repealed or amended?
S2	(1) This Act must be interpreted and applied in a manner that-	See the Open Secrets submission – the PSAM endorses.
	(2) When interpreting, applying or complying with this Act, a court, the Authority or any other person may , to the extent that is practicable, and with due consideration to the South African context, consider relevant international standards relating to the achievement of the object of this Act.	See the Open Secrets submission – the PSAM endorses.
S3	(1) The object of this Act is to establish a consolidated, comprehensive and consistent regulatory framework for the conduct of financial institutions that will support the Authority in the achievement of its objective and functions as set out in sections 57 and 58 of the Financial Sector Regulation Act.	See the Open Secrets & UBC submission – the PSAM endorses.

	2) When performing functions in terms of this Act, the Authority must take into account and seek to promote the object of this Act.	See the Open Secrets & UBC submission – the PSAM endorses.
S4	(2) This Act applies to supervised entities, including, to the extent provided for in this Act, supervised entities that are not financial institutions.	Comment: Will it be possible in terms of this definition as it currently reads to pinpoint what is meant by a supervised entity?
S7	Exemptions from application of Act, or part, provision or requirement of Act	See the Open Secrets & UBC submission – the PSAM endorses.
S8	Compliance	See the Open Secrets & UBC submission – the PSAM endorses.

CHAPTER 2: LICENSING

A general comment on the chapter on licensing is about financial institutions doing other types of business. In the field of accounting and auditing, firms simultaneously offering consulting services has created situations where their one arm of business (accounting/auditing) is in conflict with the other (consulting work for the same client). A way to address that (which is not currently legislated) is to disallow such firms from having more than one service offering. E.g. if a firm is an auditing firm, it can only be an auditing firm, not an auditing and consulting firm. It is important to guard against similar risks with financial institutions.

We accordingly endorse the observations and recommendations of Open Secrets made at paragraphs 24 to 39 of their submission.

CHAPTER 3: APPOINTMENT, LISTING AND DEBARMENT OF REPRESENTATIVES

Section	Current formulation	Comment / suggested change
S13	Requirements for appointment of representatives and duties of licensee (4) The licensee must maintain a register of representatives which must— (a) contain the information prescribed	See the Open Secrets & UBC submission – the PSAM endorses.
	(5) The Authority may maintain and publish a list with the information	See the Open Secrets & UBC submission – the PSAM endorses.

	referred to in subsection (4) of all representatives.	
S15	<p>Debarment of representatives by licensees 15. (1) (a) A licensee must debar a person from rendering financial services if the person is or was, as the case may be, a representative of the licensee, if the licensee is satisfied on the basis of available facts and information that the person— (i) does not meet, or no longer complies with, the requirements referred to in section 13(1)(b); or (ii) has contravened or failed to comply with any provision of this Act, the Financial Sector Regulation Act, or another financial sector law in a material manner; 29 (b) The reasons for a debarment in terms of paragraph (a) must have occurred and become known to the licensee while the person was a representative of the licensee.</p>	<p>Comment: Why is debarment handled by the licensee and not the Authority after the licensee refers the issue to the Authority? This power resting in the licensee’s hands rather than the Authority may lead to a similar form of consequence that whistle-blowers face. If licensees do not like a representative standing against wrong practice, they may vindictively debar the representative. If there is a sound reason for this duty remaining with the licensee, there needs to be a mechanism such as a dispute resolution mechanism that protects wrongfully debarred representatives.</p>

CHAPTER 4: CULTURE AND GOVERNANCE

Section	Current formulation	Comment / suggested change
S17	<p>Principles relating to culture and governance for financial institutions (1) A licensed financial institution must conduct its business in a manner that — (a) promotes fair treatment of financial customers;</p>	<p>See the Open Secrets & UBC submission – PSAM endorses.</p>
	<p>(2) When fulfilling its obligations in subsection (1), a licensed financial institution must— (c) identify and promote a corporate culture that takes into account ethics and aims to ensure that the fair treatment of financial customers and fair market practices, as the case</p>	<p>See the Open Secrets & UBC submission – PSAM endorses.</p>

	may be, are central to the values and corporate culture of the financial institution;	
	(2)(d) organise and control its affairs responsibly and effectively;	See the Open Secrets & UBC submission – PSAM endorses.
	(2)(f) avoid or, where avoidance is not possible, manage, mitigate and disclose conflicts of interest;	See the Open Secrets & UBC submission – PSAM endorses.
	(2)(g) deal with the Authority in an open and cooperative manner; and	See the Open Secrets & UBC submission – PSAM endorses.
S18	Obligations of governing body	Comment: Not meeting the obligations of governing body does not appear to carry any consequences. The section of the bill appears to have no mechanism for holding to account those institutions or individuals who make up governing bodies of institutions that do not have sound governance.
S19	Governance arrangements	See the Open Secrets & UBC submission – PSAM endorses.
S21	Oversight and management of conflicts of interest 21. (1) A licensed financial institution must have arrangements that provide for the effective oversight of conflicts of interest. (2) Conflict of interest arrangements must— (a) clearly define where actual or potential conflicts of interest may arise; (b) define the roles and responsibilities of persons accountable for the management and oversight of conflicts of interest; (c) set requirements relating to how conflicts of interest must be disclosed and documented to the governing body, within the financial institution and to financial customers; (d) provide for	This section leaves the defining of conflict of interest to the licensee. It would strengthen the Bill to define conflict of interest in section 1. Asking licensees to identify and oversee their own conflicts of interest does not seem like it will be effective. PSAM endorses the Open Secrets & UBC submission that: ‘This section is key to preventing mismanagement at a financial institution. Mere ‘oversight and management’ of conflicts is insufficient to effectively address conflicts and prevent private and public harm that results from conflicts. All financial institutions have had conflict of interest policies in place for

	<p>corrective actions that must be taken for non-compliance with the arrangements; (e) provide for adequate processes and procedures for transactions with related parties; and (f) address and provide for any additional matters relating to conflict of interest arrangements that have been prescribed.</p>	<p>a long time. As will be seen from the retirement fund industry case study below, it has not stopped fund administrators from appointing their own employees to be the trustees of the funds they sponsor. These policies also did not help them identify the system and other problems that saw thousands of retirement funds unlawfully cancelled while employees of the administrator were chosen as the sole trustee of a pension fund; giving them an obvious conflict of interest.</p> <p>Consequently, we recommend the following:</p> <p>Changing the word 'oversight' in the section heading and elsewhere in the section to 'prevention' or 'combatting'. Therefore the section heading should read 'Prevention and management of conflicts of interest'.</p> <p>Subsection (1) should read: 'A licensed financial institution must have arrangements that provide for the prevention and effective oversight of conflicts of interest.'</p> <p>Subsection (2)(a) leaves it to the licensee to define what a conflict of interest is. Not only is this a potential conflict in and of itself, it will also lead to different financial institutions each having their own definitions, which would be difficult for the Authority to manage and exercise effective oversight of. An example is that all corporate board members have fiduciary duties and a duty of loyalty to the corporations they oversee. If one</p>
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		<p>of the directors chooses to take action that benefits them at the detriment of the firm, they are harming the company with a conflict of interest. Suggest that a definition be inserted into section 1 of the Act. Potential wording could include 'A conflict of interest in business normally refers to a situation in which an individual's personal interests conflict with the professional interests owed to their employer or the company in which they are invested. A conflict of interest arises when a person chooses personal gain over the duties to an organization in which they are a stakeholder or exploits their position for personal gain in some way. A conflict of interest includes circumstances under section 75 of the Companies Act, and includes as defined under "personal financial interest" in section 1 of the Companies Act.' The notion of what constitutes an interest should be broader than financial interests.</p>
	<p>(2) Conflict of interest arrangements must— (d) provide for corrective actions that must be taken for non-compliance with the arrangements;</p>	<p>See Open Secrets & UBC submission – the PSAM endorses.</p>
S24	<p>Fitness and propriety and appointment of key person</p>	<p>Comment: "s" appears to be omitted Suggested change: Fitness and propriety and appointment of key persons<u>s</u></p>
S25(1)	<p>The Authority may, if it reasonably believes that a key person does not comply or no longer complies with the requirements in terms of this Act, in addition to any other action that the Authority may take under this Act or the Financial Sector Regulation Act,</p>	<p>See the Open Secrets & UBC submission – the PSAM endorses.</p>

	direct the financial institution to make arrangements that are satisfactory to the Authority to address the non-compliance within a specified period or subject to appropriate conditions.	
S25(2)	Non-compliance by key person (d) suspending or removing a person from the appointment as a key person.	See the Open Secrets & UBC submission – the PSAM endorses.
S25(3)	If a licensed financial institution fails to make arrangements contemplated in subsection (2) in order to address the non-compliance of a key person, the Authority, in addition to any other action that it may take under this Act, may—	See the Open Secrets & UBC submission – the PSAM endorses.

CHAPTER 5: FINANCIAL PRODUCTS AND FINANCIAL SERVICES

Section	Current formulation	Comment / suggested change
S27. (1)	A financial institution that provides financial products or financial services to retail financial customers must— (a) enter into a written agreement with the financial customer, whenever possible;	Comment: The inclusion of ‘whenever possible’ means this is open to interpretation and potentially leaves customers who enter into contracts telephonically at risk.
S28(1)	A financial institution must establish and implement oversight arrangements to approve, monitor and review the design, development, suitability and provision of its financial products and financial services on an on-going basis.	Comment: A financial institution must undertake oversight and engage in ad hoc reporting to the governing body of the financial institution. The draft bill doesn’t outline arrangements for the instance where the governing body does not wish to address the risk or errant behaviour within the organisation.
S28(2)	The oversight arrangements referred to in subsection (1) must – (b) aim to prevent conflicts of interest and the incentivisation of behaviour which could threaten the fair treatment of financial customers or fair and efficient financial markets,	Comment: Due to the earlier section making the licensees responsible for defining and identifying conflict of interest, this is unlikely to be managed in a coherent, consistent manner across the Financial Services sector.

	and ensure objectivity and impartiality;	PSAM endorses Open Secrets & UBC submission that: "Wording of subsection (2)(b) is so weak as to render the provision meaningless. Suggest deletion of the word 'aim to'."

CHAPTER 7: POST-SALE BARRIERS AND OBLIGATIONS

Section	Current formulation	Comment / suggested change
S34(2)	Amounts owing to or unclaimed benefits of a financial customer must be treated as amounts being held in trust by the financial institution on behalf of the financial customer, and must be handled by the financial institution in accordance with the requirements of this Act and other applicable legislation.	<p>Comment: Is there no obligation on the financial institution to make reasonable efforts to notify the financial customer of their unclaimed benefit? This provision may result in a situation where the financial institution holds the money in trust earning interest until say for example the custom who is unaware thereof passes away.</p> <p>Suggested change: Add a provision that the financial institution should make reasonable efforts to notify the financial customer of unclaimed benefits.</p>
S35(c)	provide acceptable levels of protection of safety and security in relation to the financial products, financial instruments and financial services provided, and in relation to a financial customer's personal information.	<p>Comment: The provision of customer information to third parties needs to be explicitly dealt with as this puts customers at risk of information security breaches in addition to being subjected to unwanted marketing. The current arrangements to prevent customers contact information from being given to third party marketers due to some fine print that the customer didn't know to opt out of are a matter of extensive frustration. A customer can add themselves to the national opt-out database managed by the Direct Marketing Association of South Africa if they are constantly being called by telemarketers, but each year they must add themselves again and</p>

		<p>telemarketers tend to disregard this in any event. This phenomenon has led many people to install applications like TrueCallerID to avoid being spammed.</p> <p>Suggestion: Add a provision that the customer must expressly opt in to provide permission for their contact details to be provided to third parties and that it must be in plain language so that the customer understands what they are opting into.</p> <p>Suggestion: Add a provision that financial institutions are not permitted to sell a customer's personal information to third parties.</p>
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CHAPTER 8: SAFEGUARDING ASSETS AND OPERATIONAL REQUIREMENTS

Section	Current formulation	Comment / suggested change
S38	(3) A declaration of interest made in terms of subsection (1) must be recorded in the minutes of the meeting of the governing body at which the declaration is made or considered.	See the Open Secrets & UBC submission – PSAM endorses their suggested insertion.
S43		<p>PSAM endorses the Open Secrets & UBC submission of a new subsection (2) between current subsection (1) and (2) that should read as follows:</p> <p>'A financial institution that belongs to a category, subcategory or type of financial institution that is determined for the purposes of this subsection may not conduct any other form or type of business, including consulting, other than its primary business if that other business creates a conflict of interest between services rendered in the course of its primary business and the other form or type of business.'</p>

CHAPTER 9: REPORTING

Section	Current formulation	Comment / suggested change.
S47	Parts 2 and 3 of this Chapter do not apply to— (d) an insurer as defined in section 1(1) of the Insurance Act.	See the Open Secrets & UBC submission which PSAM endorses.
S48	(4) The Authority may impose an administrative penalty in the case of any failure by a financial institution to submit to the Authority or any other person within a period specified in terms of subsection (1) or in a directive or condition imposed by the Authority in terms of the Act, any scheme, statement, report, return or other document or information required in terms of subsection (1) to be submitted, not exceeding R5 000 or another amount prescribed for every day during which the failure continues.	See the Open Secrets & UBC submission which PSAM endorses.
S49	(3) (a) The Authority may approve the non-disclosure of specific information, if the disclosure of the information— (ii) is subject to contractual obligations of secrecy and confidentiality;	See the Open Secrets & UBC submission which PSAM endorses.
	(3) (a) The Authority may approve the non-disclosure of specific information, if the disclosure of the information— (iii) may negatively impact on the financial soundness of the financial institution;	See the Open Secrets & UBC submission which the PSAM endorses.
	(3) (a) The Authority may approve the non-disclosure of specific information, if the disclosure of the information— (iv) may negatively impact on the financial stability of the financial services sector;	See the Open Secrets & UBC submission which the PSAM endorses.
	(3)(b) If the Authority approves the non-disclosure of specific information, it may direct the financial institution to include a statement to this effect, and the reasons for the non-disclosure of the information, in its disclosure.	See the Open Secrets & UBC submission which the PSAM endorses.
	(4)(c) In the circumstances referred to in paragraph (a), a financial institution must immediately publicly disclose the extent of non-compliance, an explanation of the reasons for the	See the Open Secrets & UBC submission which the PSAM endorses.

	<p>non-compliance, the consequences of the non-compliance, and the remedial measures taken by the financial institution, unless the Authority has approved that disclosure need not take place.</p>	
	<p>(5)(a) The Authority may, in addition to subsection (1), at any time, require a financial institution to publish information in the form, and within the time limits, that the Authority may determine, if the publication—</p> <ul style="list-style-type: none"> (i) is in the interest of financial customers or prospective financial customers; (ii) is in the public interest; or (iii) would support the integrity of the financial services sector. 	<p>See the Open Secrets & UBC submission which the PSAM endorses.</p>
S50	<p>(1) If the Authority reasonably believes that any information provided to the Authority in terms of this Act is incomplete, incorrect, false or misleading, after providing the financial institution with appropriate information to indicate why it believes that the information is incomplete, incorrect, false or misleading, the Authority may—</p> <ul style="list-style-type: none"> (a) direct the financial institution to provide the Authority, within a specified period, with specified information or documents, to complete or correct the information provided to the Authority; or (b) reject the information, and direct the financial institution to provide the Authority, within a specified period, with new information which is in the opinion of the Authority complete and correct. 	<p>See the Open Secrets & UBC submission which the PSAM endorses.</p>
S51		<p>The PSAM agree with the Open Secrets & UBC suggested insertion of subsection (4): '(4) The Authority must make the information referred to in (1)</p>

		and (2) public if it is in the public interest to do so.’
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CHAPTER 11: GENERAL PROVISIONS

Section	Current formulation	Comment / suggested change
S67	(2) A conduct standard prescribed for the purposes of this Act must be aimed at achieving the object of this Act, the objective of the Authority in terms of section 57 of the Financial Sector Regulation Act, and supporting the performance of the Authority’s functions in terms of section 58 of that Act.	See the Open Secrets & UBC submission which the PSAM endorses.
S69	Applications	We note no timeframes for decisions on applications made is provided for. We also note that no appeal process for decisions is provided for.
S71	Offences	See the Open Secrets & UBC submission which the PSAM endorses.

SCHEDULES

Schedule	Current formulation	Comment / suggested change.
5	Amendment 6 Section 58 of Act 9 of 2017 is amended— (b) by inserting following subsection (5): <u>“(5A) The Financial Sector Conduct Authority must—</u> <u>(a) adopt a licensing framework;</u> <u>(b) prescribe conduct standards;</u> <u>(c) develop and implement its supervisory approach;</u> <u>(d) enforce compliance with this Act and other financial sector laws in respect of which it is the responsible authority; and</u>	As per the Open Secrets & UBC submission: The insertion of “(dd)”: (dd) the public interest.

	<p><u>(e) consider the granting of exemptions under this Act and other financial sector laws in respect of which it is the responsible authority, in a manner that—</u></p> <p><u>(i) promotes the object of this Act and other financial sector laws,</u></p> <p><u>(ii) supports the achievement of the objective of the Financial Sector Conduct Authority in section 57 and its functions in section 58; and</u></p> <p><u>(iii) takes into account, and is proportionate to—</u></p> <p><u>(aa) the nature, size, scale or complexity of the conduct risks or business model of, or activities performed by, the financial institutions or persons to which the matters referred to in paragraphs (a) to (e) are applied;</u></p> <p><u>(bb) achieving the purpose of the requirement; and</u></p> <p><u>(cc) the significance of risks to the achievement of the object of this Act, the object of the Conduct of Financial Institutions Act, and the Financial Sector Conduct Authority’s objectives.”</u></p>	
<p>5</p>	<p>Amendment 6</p> <p>Section 58 of Act 9 of 2017 is amended—</p> <p>(c) by inserting following subsection (6):</p> <p><u>“(6A) When prescribing requirements in terms of this Act, the Conduct of Financial Institutions Act, or another financial sector law, and when applying requirements contained in this Act, the Conduct of Financial Institutions Act or another financial sector law, the Authority must consider—</u></p>	<p>As per the Open Secrets & UBC submission the PSAM endorse:</p> <p>The insertion of “(c)”: (c) the likely impact of requirements that are proposed to be prescribed, and the actual impact of requirements that are imposed on the public interest.</p>

	<p><u>(a) the content of applicable requirements contained in other legislation; and</u></p> <p><u>(b) the likely impact of requirements that are proposed to be prescribed, and the actual impact of requirements that are imposed on financial institutions, prudentially regulated financial groups and financial conglomerates as defined in section 1(1) of the Conduct of Financial Institutions Act, or other persons to whom the requirements apply.”.</u></p>	
	<p>Amendment 11 Section 108 of Act 9 of 2017 is amended by substituting for subsection (1):</p> <p>(1) To achieve the respective objectives of the financial sector regulators as set out in sections 33 and 57, the standards referred to in sections 105, 106 or 107 may be made on any of the following additional matters—</p> <p>(o) requirements for identifying, <u>avoiding, overseeing and managing conflicts of interest and disclosures of interests;</u></p>	<p>As per the Open Secrets & UBC submission the PSAM endorses:</p> <p>As submitted above, avoiding conflicts of interest is too weak to give the provision meaning. Suggest the substitution of ‘avoid’ with ‘prevent’, to read:</p> <p>‘(o) requirements for identifying, <u>preventing, overseeing</u> and <u>managing conflicts of interest and disclosures of interests;</u>’</p>
<p>5</p>	<p>Amendment 28 Act 9 of 2017 is amended by inserting in Chapter 10 following Part 6 (section 156):</p> <p>Prevention of the removal or dissipation of assets</p> <p>156B. <u>(1)The responsible authority may, if it reasonably suspects that—</u></p> <p><u>(a) a person—</u></p> <p><u>(i) has contravened, may be contravening or may be about to</u></p>	<p>See the Open Secrets & UBC submission which the PSAM endorses.</p>

	<p><u>contravene, a provision of a law in a material respect; or</u> <u>(ii) is likely to be in an unsound financial position, and</u> <u>(b) there is an urgent imperative to protect –</u> <u>(i) the interest of the customers of the institution; or</u> <u>(ii) the safety and soundness of the institution.</u> <u>direct any person in writing not to -</u> <u>(c) proceed with a transaction or proposed transaction related to the suspected contravention; or</u> <u>(d) remove or dissipate the assets of the institution or of the customers of the institution, for a period not exceeding 10 business days from the date of the direction or until the responsible authority exercises any other power under a law, whichever date is soonest.</u> <u>(2) The consultation requirements prescribed in section 146 of this Act apply with the necessary changes to a directive under this Part.”.</u></p>	
<p>5</p>	<p>Amendment 35 Section 266(1) of Act 9 of 2017 is amended by substituting: <u>(b) A person who contravenes section 111(4A) or (4B) commits an offence and is liable on conviction to a fine not exceeding R1 000 000 or imprisonment for a period not exceeding 2 years, or to both a fine and imprisonment.”.</u></p>	<p>See the Open Secrets & UBC submission which the PSAM endorses.</p>

GENERAL RECOMMENDATIONS

The PSAM are largely in support of the Bill subject to the submissions made above. We are concerned that the current COFI Bill will not apply to market infrastructures. We would support the suggestion made at paragraph 7.5 of the *Response document supporting the revised Conduct*

*of Financial Institutions Bill*¹ that ‘market infrastructures be required to comply with specified obligations in the COFI Bill, especially Chapter 4 on Culture and Governance.’

We are also concerned that the current COFI Bill ‘removes all reference to medical schemes and medical scheme administrators and therefore the Bill does not apply to these entities.’² This is a significant sector that requires improved regulation. It is also a sector that is integral to the effective rollout of the NHI. The current task team that is considering these entities regulation should not arrive at a situation that results in them being treated in contrast to the primary object of the COFI Bill which is ‘to establish a consolidated, comprehensive and consistent regulatory framework for the conduct of financial institutions’.³

We have also considered Open Secrets’ and the Unclaimed Benefits Campaign’s research and findings related to the Retirement Funds Industry which supports their observations and recommendations in Part C of their submission. We endorse their submissions made in that regard.

We have also considered Open Secrets research and findings on the auditing industry and as mentioned above under our submissions dealing with Chapter 2 of the Bill, endorse their observations and recommendations made at paragraphs 24 to 39 of their submission.

SUBMISSION ENDORSEMENTS

The following organisations endorse this submission:

1. See the Open Secrets & UBC submission where they specifically endorse certain aspects of the PSAM submission.

ABOUT THE PUBLIC SERVICE ACCOUNTABILITY MONITOR (PSAM)

The PSAM is an institute within the School of Journalism and Media Studies at Rhodes University that seeks to contribute to addressing particular societal problems originating from systemic public resource management (PRM) failures.

Should you have any questions or require additional information please contact the person whose details appear on the cover of this submission.

¹ https://static.pmg.org.za/200929COFI_Response_Document.pdf

² See paragraph numbered 3 of https://static.pmg.org.za/200929COFI_Response_Document.pdf

³ Section 3 of the COFI Bill.