

FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021

COLLECTIVE INVESTMENT SCHEMES

TRANSFER AND MERGER OF PARTICIPATORY INTERESTS IN COLLECTIVE INVESTMENT SCHEMES

Standard No. CIS.S.4.2

issued by NAMFISA under sections 409(1) and 410(5)(cc) of the Financial Institutions and Markets Act, 2021

Definitions

1. (1) In this Standard—
- (a) “Act” means the Financial Institutions and Markets Act, 2021 (Act No. 2 of 2021), and it must be read with the regulations prescribed under the Act and the standards and other subordinate measures issued by NAMFISA under the Act;
 - (b) “merger” means the consolidation of—
 - (i) two or more portfolios within the same collective investment scheme; or
 - (ii) two or more standalone collective investment schemes into a single scheme, in which all assets, liabilities, and investors’ participatory interests of the merging portfolios or schemes are transferred to and vest in the new portfolio or scheme;
 - (c) “original collective investment scheme or portfolio” means the collective investment scheme or portfolio that will be transferred to another collective investment scheme or portfolio;
 - (d) “reorganisation” means the creation or closure of collective investment schemes, portfolios or classes, or any alteration that materially affects investor rights or economic interests;
 - (e) “transfer” means any of the following acts relating to a collective investment scheme or any of its portfolios:
 - (i) the movement or reallocation, in whole or in part, of assets, liabilities or participatory interests between portfolios within the same collective investment scheme or across different collective investment schemes, without the extinguishing of the original portfolio or scheme; or
 - (ii) the cession, assignment, delegation, substitution or novation of investor participatory interests or rights from one portfolio or collective investment scheme to another;
 - (f) “targeted portfolio or collective investment scheme” means the collective investment scheme or portfolio which will receive another collective investment scheme or portfolio; and
 - (g) “transaction” means the collective reference to merger, transfer or reorganisation.
- (2) Words and phrases defined in section 168 of the Act have the same meaning in this Standard, unless the context indicates otherwise, including without limitation, the following:

- (a) assets;
- (b) collective investment scheme;
- (c) custodian;
- (d) deed;
- (e) investor;
- (f) manager;
- (g) participatory interest;
- (h) portfolio; and
- (i) trustee.

Applicability

2. (1) This Standard outlines the requirements and approval conditions applicable to a transaction of a collective investment scheme or its portfolios.

- (2) This Standard applies to:
 - (a) a collective investment scheme;
 - (b) a manager of a collective investment scheme;
 - (c) an authorised representative of a manager;
 - (d) a designated representative of an authorised representative;
 - (e) a nominee company; and
 - (f) a trustee or custodian.

Investor conditions for approval or decline

3. (1) No transaction shall be effected unless—

- (a) the prior written consent is obtained from investors holding 51% in value of participatory interests in the original and targeted collective investment schemes (if applicable) or portfolios in accordance with the provisions of the deed; and
- (b) NAMFISA has granted prior written approval.

(2) Notwithstanding sub-clause (1)(a), a manager is exempt from obtaining the prior written consent of investors, provided that the merger with, or reorganisation of, the collective investment scheme or portfolio with another collective investment scheme or portfolio is conducted in accordance with the following conditions:

- (a) the boards of the manager of the original and targeted collective investment schemes have approved the proposed merger or reorganisation; and

- (b) the trustee or custodian of the original and targeted collective investment schemes (if applicable) confirms in writing that the proposed merger or reorganisation complies with the process outlined in the deed.

(3) Notwithstanding sub-clause (1)(a), a manager is exempt from obtaining the prior written consent of investors, provided that the transfer is conducted in accordance with all the following conditions:

- (a) investors in the targeted portfolio must be provided, in writing and promptly with a clear notice of the proposed transfer, concurrently with the notification of the ballot to investors in the original portfolio;
- (b) the warning under paragraph (a) must contain accurate and sufficient information sufficient to enable investors in the targeted portfolio to make an informed decision regarding their rights, including the potential impact on investment policy, risk and performance;
- (c) the assets transferred into the targeted portfolio must be of a type, quality and liquidity comparable to those held in the original portfolio, or otherwise comply with the investment mandate of the targeted portfolio;
- (d) the manager must prepare and maintain a documented plan to manage any illiquid assets, including all required investor disclosures, and must ensure that the plan upholds the principles of fair treatment of investors; and
- (e) the custodian or trustee of the targeted portfolio must confirm in writing that—
 - (i) receiving the transferred assets is consistent with the investment objective and policy of the portfolio;
 - (ii) such transaction does not contravene applicable investment limits imposed by NAMFISA; and
 - (iii) such transaction is authorised by the deed.

(4) If investors holding 51% in value of participatory interests in the targeted portfolio object in writing to the proposed transaction, the manager—

- (a) may not proceed with the transaction; and
- (b) must inform NAMFISA in writing of such objection within 14 business days of receipt of the notice.

Submission of proposed transaction for approval

4. (1) The manager must submit to NAMFISA the full particulars of the proposed transaction, including:

- (a) a detailed description of the nature and terms of the transaction;

- (b) valuation of the transaction;
- (c) a communication plan for investor notification;
- (d) written investor consent; and
- (e) any other information NAMFISA may require.

(2) The submission must be made sufficiently in advance to allow NAMFISA to discharge its oversight function effectively.

Investor notification

5. The manager must ensure that every investor of whom the manager is aware is furnished, at least 30 business days prior to the effective date of the transaction, with written notice containing:

- (a) full particulars of the proposed transaction;
- (b) anticipated impact on investor participatory interests;
- (c) procedures for investor approval or objection; and
- (d) options for redemption or withdrawal, if applicable.

Conditions for regulatory approval

6. NAMFISA may grant approval of a transaction only if satisfied that—

- (a) upon effectiveness of the transaction, each investor will hold participatory interests with an aggregate monetary value not less than the lower of—
 - (i) the net asset value; or
 - (ii) the market value,
of the investor's existing participatory interests;
- (b) the transaction does not result in unfair prejudice to investors, having regard to the interests of the investors as a whole and the fiduciary duties of the manager;
- (c) no majority in value of investors have objected in writing within the stipulated time; and
- (d) all creditor rights and existing obligations are preserved or novated as appropriate.

Effect of approved transactions

7. Upon effectiveness of the approved transaction—

- (a) the deed of the targeted collective investment scheme or portfolio is binding on all investors of the original collective investment scheme or portfolio;
- (b) all assets, liabilities, rights and obligations of the original collective investment scheme or portfolio vest in the targeted collective investment scheme or portfolio;
- (c) income and other benefits accruing from the assets accrue to investors of the targeted collective investment scheme or portfolio;
- (d) substituting participatory interests of equivalent economic value shall be issued to investors without the imposition of registration or endorsement fees; and
- (e) NAMFISA must effect such endorsements or registrations as are necessary to give effect to the approved transaction.

General

8. This Standard does not derogate from any rights of creditors or existing obligations of any original collective investment scheme or portfolio, except as agreed in writing.
