INDUSTRY COMMENTS ON STANDARD 4.2 TRANSFER AND MERGER OF PARTICIPATORY INTERESTS IN COLLECTIVE INVESTMENT SCHEMES

Company Name:	STD/REG No. & Section:	Comment/Description of issue:	Proposed Amendment/Solution:	Accepted (Comments):	Rejected (Comments):
Sisedi Investment Group (Pty)Ltd	Standard No. CIS.S.4.2 Definitions, Clause 1(b), 1(e) and Clause 3	The definitions of "**merger**" and "**transfer**" overlap materially, as both include the movement of assets, liabilities and participatory interests between collective investment schemes or portfolios. This overlap creates uncertainty as to which regulatory process, investor consent requirements and approval conditions apply to a transaction, particularly where a transaction	✞ Limiting "**merge**r" to the permanent consolidation of portfolios or schemes into a single surviving portfolio or scheme; and ✞ Defining "transfer" as the movement or reallocation of assets, liabilities or participatory interests without the extinguishing of the original portfolio or scheme. Include a	<u>Clarification:</u> The definition of "merger" already outlines that the consolidation of portfolios or schemes results in a single portfolio or scheme. Adding single surviving portfolio or scheme would be superfluous.	

		contains characteristics of both.	clarification provision indicating which approval and consent regime applies where a transaction contains elements of both.	Accepted, revised definition of transfer. Clause 3 of the Standard envisions that all mergers, transfers or reorganizations (collectively referred to as transaction) require investor and NAMFISA approval before they can come into effect.	
	Standard No. CIS.S.4.2 Definitions, par. 1	Paragraph 1(1)(e)(ii) is essentially the same transaction as in paragraph 1(1)(b).	✞ Where the assets, liabilities, and participatory interests are transferred from one portfolio or scheme (“original”) to another (“designated”), then use “transfer”. “transfer”. Where the assets, liabilities, and participatory interests of two or more portfolios or	Accepted	

			schemes are combined to form one new Where the assets, liabilities, and participatory interests of two or more portfolios or schemes are combined to form one new portfolio or scheme, then use “merger”. Which is very likely the form a “merger” would take. This is similar to the old/current “amalgamation” under section 24 of the UTCA. ❖ And mergers may have the implication of the creation of a new portfolio or scheme, which will require NAMFISA’s approval under different standards or regulations.		
		As per par. 1(1)(d), the creation or closure of a portfolio or scheme is “reorganization”. However, a “transfer” or “merger” is	✞ Use or limit “reorganization” for/to any activity that does not involve the “transfer” or	Accepted	

		likely to result in the closure or creation of a portfolio or scheme. At least two of the defined transactions may thus be present in what might be considered a single transaction"	"merger" of assets, liabilities, and participatory interests. ✞ That is changes within a portfolio or scheme. ✞ Remove anything that may seem like "reorganization from "merger" and "transfer"		
		Paragraph 1(1)(b) refers to a "designated" portfolio or scheme, but this is not defined; instead "targeted" is defined in paragraph 1(1)(f).	✞ Either replace "designated" with "targeted" in paragraph 1(1)(b); or ✞ Replace "targeted" in par. 1(1)(f) with "designated".	Accepted, designated to be replaced with "new".	.
	Definition of merger	The word "umbrella" in the definition of "merger" is not necessary; it may mean that there is a scheme within a scheme, whereas portfolios are under or within a scheme.	❖ Delete the word "umbrella".	Accepted	
	Definition of reorganization	In the definition of "reorganization" [par.	✞ Rather use words or phrases that speak to the	<u>Clarification:</u>	

		1(1)(d)] the use of words like "structural", "strategic" or "operational" may cause interpretation issues given that there may be other *sui generis* transactions to those listed therein, which may not fit those words.	intended changes. ✞ Outside of transfer or merger, this would mean amendment of provisions in or addition of provisions to a deed. ✞ Let the language reflect this to be clear.	Not every deed amendment constitutes a reorganisation, because the definition is triggered only by amendments that result in a *significant structural, strategic, or operational change or that materially affect investor rights or economic interest*. Routine, administrative, or technical deed amendments fall outside the definition precisely because they do not meet this significance and materiality threshold.	
		In the definition of "transfer" in par. 1(1)(e)(i), what does management, administrative, fiduciary or operational responsibilities refer to or in relation to who (*e.g.*, a manager), and	✞ The responsibilities should be specific to those of a manager, trustee, or custodian. ✞ And "another party" should then reference a	The intention of this clause was to provide for the transfer of the business of a management company. However, the sub-clause will be deleted since Gen Standard 10.28	

		who may be “another party”?	manager, trustee or custodian. This provision should also take “outsourcing” into consideration, if it is intended here.	already provides for the transfer and amalgamation of financial institutions including CISs.	
		The par. 1(1)(f) definition needs to be technically correct, as par. 1(1)(e): a portfolio may be merged with another portfolio or transferred to another scheme; a scheme may be transferred to and “received” by another manager and trustee, but may not be “received” by another scheme. Two schemes may be merged into a new scheme, under a new deed.	❖ The technical aspects of merger and transfer need further consideration and working to be clear as to what will happen and how it will happen in practice.	<u>Clarification:</u> “Transfer” captures three distinct movements that may occur separately or together: (i) a change in who is responsible for running the fund (management, administrative, fiduciary or operational responsibilities); (ii) a movement of assets, liabilities or participatory interests between portfolios or schemes; and (iii) a movement of investors’ legal rights or participatory interests from one	

				portfolio or scheme to another. Part (f) then simply identifies the receiving portfolio or scheme in transfers under (ii) and (iii), so it is always clear where assets and/or investors are moving to; it does not expand the meaning of "transfer" or introduce a new obligation.	
	Standard No. CIS.S.4.2 - Clause 3(1)(a) and Clause 3(Standard No. CIS.S.4.2 – Clause 3(4)1) (b)	Clause 3(1) requires both: • investor consent (51% in value); and • prior written approval from NAMFISA. The Standard does not clarify the **regulatory rationale for requiring two separate approvals**, nor whether one approval is conditional upon the	Clarify the approval framework by explicitly stating: • the purpose and scope of each approval. • whether investor approval must precede regulatory approval or vice versa; and • whether NAMFISA	<u>Clarification:</u> According to clause 3 The investors and NAMFISA is required. Clause 6(c) outlines that investor approval is a condition to approve the transaction. However to clarify this we have added in clause 4 that written	

		other. This creates uncertainty regarding sequencing, timelines and the circumstances under which investor consent alone would be insufficient.	approval may be conditional upon subsequent investor consent (or the reverse). This will improve regulatory certainty and transaction planning.	investor approval is a requirement for submitting the transaction for NAMFISA approval.	
		In par. 3(1)(a) and par. 3(2)(b) the phrase “trust deed” is used, but only “deed” is defined.	Delete the word “trust”.	Accepted	
	Standard No. CIS.S.4.2 - Clause 3(4)	Clause 3(4) refers to objections by investors in the targeted portfolio to a proposed “**transfer**”, whereas the objection mechanism logically applies to a **transaction** as defined in Clause 1(g), which includes mergers, transfers and reorganizations. The current wording is inconsistent with the defined term and may unintentionally narrow the scope of the clause.	Replace the word “**transfer**” with “**transaction**” throughout Clause 3(4), so that the clause reads consistently with the defined term and applies uniformly to all transaction types under the Standard.	Accepted	

	Standard No. CIS.S.4.2 - Clause 4(1) and Clause 4(2)	The Standard requires submissions to be made "sufficiently in advance" but does not prescribe a **clear submission timeframe**. This creates uncertainty for managers, trustees and investors, and may lead to inconsistent regulatory expectations or delays in transaction execution.	Introduce a clear minimum submission timeframe, for example: "Full particulars of a proposed transaction must be submitted to NAMFISA at least **60 business days** prior to the proposed effective date, unless otherwise approved in writing by NAMFISA."	<u>Clarification</u> An explicit timeframe cannot be prescribed, as it depends on the nature and complexity of the transaction; the provision is therefore intentionally framed broadly to accommodate transactions of differing scope and intricacy.	
	Standard No. CIS.S.4.2 – par. 4(1)(b)	A "valuation report" is not defined or made reference to. Will it be clear to a manager or trustee what is referred to or intended?	Either reference a section of the Act or a standard or a regulation that refers to a "valuation report", or provide details of the report here.	<u>Clarification:</u> This clause is reworded to read "valuation of the transaction"	
	Standard No. CIS.S.4.2 - Clause 3 generally	The Standard places primary responsibility on the **manager**, with limited express reference to the **trustee or custodian**, despite their statutory fiduciary oversight role and responsibility for deed	Strengthen the role of the trustee or custodian by: • Explicitly requiring trustee or custodian confirmation for all transactions; and	Please refer to section 192(1)(a) and (c) of FIMA where the trustee/custodian duties are codified.	

		compliance and investor protection.	• Clarifying their independent responsibility to assess deed compliance and investor fairness, not merely procedural confirmation.		
	Standard No. CIS.S.4.2 - Clause 5	While the Standard prescribes minimum notification timelines, it does not clearly define **minimum disclosure standards** for investor communications, particularly for complex or multi-step transactions.	Specify minimum disclosure content requirements, including: • changes to investment objectives and risk profile. • fee and cost implications; and • investor rights, including redemption or objection options.	<u>Clarification:</u> The Standard requires full disclosure of the transaction and hence minimum disclosure standards cannot be prescribed.	
		Does this mean the notice is given just prior to the 30-day period and investor consent or objection must be obtained within the 30-day period? Will the NAMFISA process also fall within these days or is	• Could the manager require an investor to consent or object within a specified number of days, within this provision?	<u>Clarification:</u> Yes. The clause provides for a minimum 30-business-day notice period before the effective date, within	

		there another period for NAMFISA?	• Investor and NAMFISA days should be correctly sequenced.	which the investor approval or objection process must occur. Provided the manager structures the voting or objection procedures so that investors have a reasonable opportunity to consider the information and exercise their rights within that period, the requirement is satisfied.	
	Standard No. CIS.S.4.2 - Clause 6 and Clause 7	The Standard is silent on **post-approval and post-implementation reporting obligations**, which are important for regulatory assurance and investor protection.	Introduce a requirement for post transaction reporting to NAMFISA and investors, including: • confirmation of effective date. • reconciliation of assets and participatory interests; and • trustee or custodian confirmation that the transaction was executed in	<u>Clarification:</u> The effective date of the transaction is determined by the manager when seeking approval of the transaction. The suggested post transaction reporting requirements are outlined in clause 7. In any event, the fiduciary duty of a trustee/custodian in	

			accordance with the approval granted.	terms of section 192 of FIMA remains and so the trustee/custodian would still oversee the manager and this transaction.	
	Standard No. CIS.S.4.2 - Definitions, Clause 1(d)	The draft definition of "reorganisation" is broad and may create confusion. It currently includes changes to investment objectives, policies, or other structural changes that are already governed under **Standard No. CIS.S.4.12 and Section 242 of FIMA**. Including these broader items under Standard 4.2 may inadvertently impose transfer/merger requirements where they are not necessary, such as in the creation of a new CIS, and could cause inconsistencies in investor consent requirements.	Clarify the definition of "reorganisation" to **focus solely on the closure of a CIS, portfolio, or class**. Exclude changes to investment objectives or policy, which are already covered under Standard 4.12 and Section 242. This will reduce overlaps, prevent confusion, and ensure that investor consent requirements are applied appropriately only where necessary.	Accepted.	

	Standard No. CIS.S.4.2 - General	The language in the form of words and phrases used is in many instances not correct or clear; syntax is also problematic in many instances throughout the standard. A soft copy would be useful to point these out.	In the absence of a soft copy, the language and syntax of the standard need to be reviewed and significantly improved for clarity.	Noted with appreciation.	

Company Name:	**STD/REG No. & Section:**	**Comment/Description of issue:**	**Proposed Amendment/Solution:**	**Accepted (Comments):**	**Rejected (Comments):**
General Comments: 1. The process for approvals need to be clearly stated because it is not clear a which points NAMFISA's approval is required. Section 3(1) (b) states that no transaction shall be effected unless NAMFISA has granted prior written approval, however it is unclear whether the approval is required before the investor consent is obtained or after. However, Section 4 then sets out what the Manager is required to submit to NAMFISA regarding the proposed transaction – i.e. this seems to indicate that NAMFISA must be approached for approval prior to any engagement with investors. Section 6 however, contradicts this as it states at sub (c) that NAMFISA can only grant approval if no majority in value of investors have objected – i.e. this then reads that NAMFISA approval is obtained **after** engagement with investors (be it under the section 3(1) process or section 3(3) process). Please take note that the color coding in column two (2) and three (3) of this document. • Blue- clarity requested/suggested solution/recommendation • Red- suggested deletion of a section or wording.					
NaSIA	1(b) "**merger"** means the consolidation	It is not clear how a merger differs to a transfer. Is the intention with a merger that	Suggested amendment: "merger" means the consolidation	Accepted	

	of i) two or more portfolios within the same umbrella collective investment scheme or ii) two or more standalone collective investment schemes, into a single portfolio or scheme, in which all assets, liabilities, and investors' participatory interests of the merging portfolios or schemes are transferred to and vest in the designated portfolio or scheme.	two collective investment schemes or two portfolios become one new collective investment scheme or portfolio? If so, this definition does not make that clear.	of i) two or more portfolios within the same umbrella collective investment scheme or ii) two or more standalone collective investment schemes, into a single ~~portfolio or~~ scheme, in which all assets, liabilities, and investors' participatory interests of the merging portfolios or schemes are transferred to and vest in the designated new portfolio or new scheme		
	"**reorganisation**" means any significant structural, strategic or	We have extreme concerns with what this definition brings into the scope of this Standard.	**Suggested amendment:**	Accepted	

	operational change affecting a collective investment scheme or portfolio, including but not limited to, changes to investment policies or objectives, the creation or closure of collective investment schemes, portfolios or classes, or any alteration that materially affects investor rights or economic interests	<u>To first address "investment policies and procedures":</u> Standard No CIS.S.4.12 (*Matters to be Regulated by Deed*) stipulates which matters must be provided in a deed of a collective investment scheme. These include, among others: i) Objects of a collective investment scheme or portfolio ii) Investment policy in respect of each portfolio iii) The manner in which a deed may be amended. Further, section 242 (2) of FIMA states: "*The parties to a deed may by supplemental deed amend the deed, but such amendment of a deed is not valid unless the consent of a majority in value of investors has been obtained in the manner determined in the deed".* Section 242(3) goes on to detail the conditions under which	"reorganisation" means ~~any significant structural, strategic or operational change affecting a collective investment scheme or portfolio, including but not limited to, changes to investment policies or objectives,~~ the ~~creation or~~ closure of collective investment schemes, portfolios or classes~~, or any alteration that materially affects investor rights or economic interests~~		

		NAMFISA can dispense with the consent requirement. The objects of a CIS and the investment policy of a portfolio will be stipulated in the deed and are therefore subject to the amendment provisions as required by s242 of FIMA. Surely the intention is not to require this Standard and the comprehensive merger process to apply to a change in objective / investment policy. Secondly to address "creation or closure of collective investment schemes, portfolios or classes": The creation of a collective investment scheme is by agreement between a			

		manager and a trustee/custodian and the signing of a deed. It is impossible to apply this merger process to creating a CIS as there would be no investors to give consent. Similarly, when creating portfolios or classes, this does not affect the rights of any existing investors in other portfolios or classes so it is unclear why consent is required (and whose in the case of a creation of a new CIS/portfolio). Thirdly to address “any alteration that materially affects investors rights or economic interests”: As detailed above, many matters that, if altered, would affect investors rights or economic interests, have to be			

		covered in the deed – i.e. the objects and investment policy and, more importantly, the fees and charges applicable. Standard 4.12 expressly provides that a deed must provide for written notice of not less than three months to investors of an increase in any charge or change in method of calculation which could result in an increase or additional charge. It is not clear how the amendment process detailed in FIMA and the specific requirements from Standard 4.12 are to be applied n conjunction with this Standard. We can only assume that these items were included erroneously are request			

		their deletion / exclusion from this Standard.			
	(e) "**transfer**" means any of the following acts relating to a collective investment scheme or any of its portfolios: (i) the assignment or cession of management, administrative, fiduciary or operational responsibilities to another party;	As relates to (i): Please provide clarity as to what item (i) intends to provide for? It is not clear. We do not believe it should include a change in management, administrative, fiduciary or operational responsibilities that are covered elsewhere (i.e. the Act and the Trust Deed).	Please provide clarity.	<u>Clarification:</u> The intention of this clause was to provide for the transfer of the business of a management company. However, the clause will be deleted because Gen Standard 10.28 already provides for this.	
	Clause 3. (1) No transaction shall be effected unless – (a) the prior written consent is obtained from investors	"transaction" is defined to include merger, transfer and reorganization. The language used in 3(1)(a) only makes sense when referring to a transfer and/or merger, not a reorganistion as there is no	**Suggested wording:** (1) No transaction shall be effected unless – (a) the prior written consent is obtained from investors holding 51% in value of participatory interests in	Accepted	.

	holding 51% in value of participatory interests in the original and targeted collective investment schemes or portfolios in accordance with the provisions of the trust deed; and (b) NAMFISA has granted prior written approval.	original and target portfolio / CIS.	the original and, as applicable, targeted collective investment schemes or portfolios in accordance with the provisions of the trust deed; and NAMFISA has granted prior written approval.		
	Clause 3(2)(a): the boards of the manager of the original and targeted collective investment schemes have approved the proposed merger or	As above, reorganization does not entail there being an original and targeted portfolio so the wording does not make sense.	**Suggested wording:** 3(2)(a) the boards of the manager of the original and, if applicable, targeted collective investment schemes have approved the proposed merger or reorganisation; and	Accepted	

	reorganisation; and				
	Clause 3(3)(e): 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	The sub-clause calls for the Manager to maintain a *'documented plan'* to manage an illiquid assets however there is no minimum criteria set in the Standard as to what the *documented plan* should contain. What is meant by 'illiquid assets'? It is recommended that the concept be clearly defined.	It is recommended that the proposed Standard clearly articulates the minimum requirements of the 'documented plan' to ensure consistency and avoid ambiguity in interpretation.	<u>Clarification:</u> An illiquid asset is one that cannot be readily realised for cash within a reasonable timeframe at a price close to fair value, without materially impacting the portfolio. In practice, this means assets with no active secondary market or where disposal would require extended time or significant discounts, which has implications for valuation, pricing, and the fund's ability to meet redemptions. For example: • unlisted shares • property and infrastructure assets	Declined proposal to outline minimum requirements of the documented plan because it is the discretion of the manager to outline what a reasonable investor must know.

	Clause 3(4): If investors holding 51% in value of participatory interests in the targeted portfolio object in writing to the proposed transfer, the manager –	Clarity is sought in relation to the calculation of the 14 days. From which point in time is the 14 day period intended to be calculated	Please provide clarity.	We acknowledge that this may cause confusion, as the provision does not expressly specify the triggering date. Amended to include the trigger date: must inform NAMFISA in writing of such objection within 14 business days of *receipt of the notice*.	
	Clause 3(4)(ii): must inform NAMFISA in writing of such objection within 14 business days.	From when is the 14 (fourteen) business days calculated? It is assumed that the period will run from date of Investor Notification (as per Clause 5) however this is pure assumption.	Recommended that the start date of the 14 business day period be clearly articulated.	We acknowledge that this may cause confusion, as the provision does not expressly specify the triggering date. Amended to include the trigger date: must inform NAMFISA in writing of such objection within 14 business days of *receipt of the notice*.	

	Clause 4: The manager must submit to NAMFISA the full particulars of the proposed transaction, including:	Based on the current amalgamation / transfer process as set out in Section 24 of the Unit Trust Control Act: 1. The proposed transaction requires Registrar endorsement (Clause 4 of the proposed standard). 2. Once endorsed, the Manager may proceed with the Ballot process (Investor Notification as provided for in Section 5 of the proposed Standard). No reference is made to the requirement for the supplementary application to the Registrar for the actual approval of the transfer, with independent auditor verification of the ballot outcome. Is the intention for this final supplementary	It is recommended that the full application process, if it is to remain unchanged, be documented in the Standard, along with the requirements surrounding the independent verification of the ballot outcome and timelines for approval of the amalgamation/transfer.	Regarding outlining the full application process in this Standard, please note that Schedule 1(2) of Standard 4.12 requires that the main deed outline : (j) *the manner of obtaining investor consent;* (k) *notices to investors in respect of changes to portfolio* Therefore, it is expected of a manager to follow the outlined in the deed.	

		submission in the application process to be removed.			
	Clause report; 4(1)(b):	Under Chapter 4 of FIMA, no provision is made for the appointment of a Valuator. Provision has only been made for the appointment of an Auditor (Section 186). 1. Notwithstanding the comment made above, in which instances would a valuation report be required? *For example: is it in the event of a merger of two CI schemes, or also in the event of fund amalgamation (i.e. within one CI scheme)?* 2. What would be the minimum disclosure requirements of this valuation report?	Given the requirements for a valuation report, please advise who is to issue the said report?	<u>Clarification:</u> The valuation report is not meant in the strict sense instead the requirement is for the manager to disclose the valuation of the transaction. The clause will be rephrased to read “valuation of the transaction”.	

	Clause 4(2): The submission must be made sufficiently in advance to allow NAMFISA to discharge its oversight function effectively.	What is considered *'sufficiently in advance'* and in terms of which step in the application process does this relate.	It is recommended that turnaround times be formally documented to remove ambiguity and ensure transparency in the process.	<u>Clarification:</u> It is deliberately framed broadly to allow the manager adequate time, proportionate to the nature and complexity of the transaction.	
	Clause 6(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;	How would NAMFISA determine prejudicial status of the transaction?	Recommended that the grounds for the determination of what constitutes 'unfair prejudice' should be clearly documented to avoid ambiguity and a consistent application of the principles.		Declined. NAMFISA would assess unfair prejudice by objectively examining the actual impact of the transaction on investors, including changes to rights, economic outcomes, liquidity, and fees, and whether any group of investors is disadvantaged. Prejudice is unfair where investors are worse off

					without proper justification, compensation, or informed consent, particularly if the transaction benefits the manager or a subset of investors at the expense of others, and where this outcome is inconsistent with the manager's fiduciary duties.
	Clause 6(d): all creditor rights and existing obligations are preserved or novated as appropriate.	How would Namfisa determine if all creditor rights and existing obligations are preserved?	Please provide clarity.	<u>Clarification:</u> NAMFISA would satisfy itself by requiring evidence that creditor positions are not weakened by the transaction by for example reviewing: Legal documentation showing that creditor	

				rights and obligations remain unchanged. Creditor consents or confirmation	