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General Notice

NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY

No. 270

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STANDARDS UNDER THE FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021: COLLECTIVE INVESTMENT SCHEMES

The standards, as set out in the Schedule, are published by the Namibia Financial Institutions Supervisory Authority (NAMFISA) under section 409 of the Financial Institutions and Markets Act, 2021 (Act No. 2 of 2021). The standards come into effect on the date of publication in the *Gazette*.

**NAMIBIA FINANCIAL INSTITUTIONS
SUPERVISORY AUTHORITY**

SCHEDULE**FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021****COLLECTIVE INVESTMENT SCHEMES****ADDITIONAL INFORMATION REQUIRED TO ENABLE AN INVESTOR TO MAKE AN INFORMED DECISION PURSUANT TO SECTION 172(1)(b) OF THE ACT****Standard No. CIS.S.4.1**

issued by NAMFISA under sections 172(1)(b), 410(5)(b) 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) “CIS” means a collective investment scheme as defined in section 168 of the Act;
 - (c) “NAV” means the “net asset value” of a participatory interest as determined in accordance with Standard No. CIS.S.4.11 – Meaning of “Net Asset Value” for the purposes of section 238 of the Act;
 - (d) “offer” means to sell or to proffer any participatory interest to a client or a potential client;
 - (e) “operator” means the operator of a foreign CIS; and
 - (f) “transaction” has the meaning ascribed thereto by section 78 of the Act insofar as it is applicable in the context of this Standard, and refers to a contract of sale and purchase of a participatory interest.
- (2) Words and phrases defined in the Act have the same meaning in this Standard, unless the context indicates otherwise, including without limitation, the following –
 - (a) as defined in section 1 of the Act –
 - (i) client;
 - (ii) NAMFISA;
 - (b) “investment manager” as defined in section 78 of the Act;
 - (c) as defined in section 168 of the Act –
 - (i) assets;
 - (ii) authorised representative;

- (iii) collective investment scheme;
 - (iv) designated representative;
 - (v) investor;
 - (vi) manager;
 - (vii) participatory interest; and
 - (viii) portfolio;
- (d) “collective investment scheme in unlisted securities” as defined in section 210 of the Act;
- (e) “collective investment scheme in money market instruments” as defined in section 213 of the Act; and
- (f) “foreign collective investment scheme” as defined in section 218 of the Act.

Applicability

2. This Standard applies to every manager of a CIS and its authorised representatives and to the designated representatives of such authorised representatives.

General information

3. (1) A manager, authorised representative or a designated representative of a collective investment scheme must, before entering into an initial transaction relating to any portfolio with an individual investor, provide to the investor general information in respect of a CIS or portfolio of a CIS pursuant to section 172(1)(b) of the Act, including:

- (a) terms and conditions of investment and redemption or repurchase of participatory interests, including redemption period in days;
- (b) administration expenses (e.g., auditing, legal, IT) of the portfolio, as a percentage of assets and NAV, and any other expense measure, deemed appropriate and explained by the manager, authorised representative or designated representative, together with a description of the services to which the expenses relate and the basis of allocation (e.g., pro rata, per capita); and
- (c) fees and expenses charged against investors, as a percentage of participatory interests, and any other expense measure, deemed appropriate and explained by the manager, authorised representative or designated representative, together with a description of the services to which the fees and expenses relate and the basis of allocation (e.g., redemption fees, transfer fees, front- or back-end loaded charges or commissions).

(2) A manager, authorised representative or a designated representative of a CIS must, before entering into an initial transaction relating to any portfolio with an individual investor, provide to the investor investment-related information in respect of a CIS or portfolio of a CIS pursuant to section 172(1)(b) of the Act, including:

- (a) name, type (e.g., CIS in money market instruments, CIS in unlisted securities) and form (e.g., open-ended, closed-ended, trust, company) of the CIS or portfolio (e.g., feeder fund, fund-of-fund);

- (b) whether the manager or an investment manager manages the assets, and, where an investment manager manages the assets, the identity of the investment manager and a description of its relationship to the investment manager;
- (c) suggested investment period, if any, in years;
- (d) asset and asset sector allocation of assets, including individual securities constituting the Top 10 holdings of the assets, and details of portfolios in feeder-fund or fund-of-fund arrangements;
- (e) tax status of the CIS, including investment income, interest and dividends;
- (f) the risk inherent in the portfolio, including the measurement of risk and explanation thereof, and use of leverage and derivative instruments and associated risks;
- (g) past or current rate of return of the portfolio, including the measurement of return and explanation thereof, both on a gross and net of expenses basis, for one, five and 10 calendar-year periods or such periods the manager must specify where periods are shorter;
- (h) names of, and relative performance to benchmarks, including benchmarks used, both on a gross and net of expenses basis;
- (i) NAV price and any material changes, where applicable;
- (j) fees and other charges of the manager, as a percentage of assets and NAV;
- (k) fees and other charges in respect of investment management, custody and safekeeping of assets;
- (l) distributions in the immediately preceding period, as a percentage of assets;
- (m) a description of the borrowing powers of the CIS and scrip lending, if any;
- (n) a statement that fees and expenses are only one of many factors investors should consider when making investment decisions; and
- (o) a statement that NAV is subject to fluctuations from time to time, and that past performance is not necessarily an indication of expected future performance.

(3) Where an operator of a foreign CIS or portfolio solicits investments from an investor, the operator must provide to an investor the information set out in this clause and clause 4 and any other information relevant to the foreign CIS or portfolio to enable the investor to make an informed decision, including but not limited to:

- (a) the currency in which the CIS or portfolio is denominated;
- (b) currency risks;
- (c) any withholding tax applicable to investments;
- (d) custody and safekeeping of assets; and
- (e) the exercise of voting power conferred by assets.

- (4) The information provided to an investor in terms of this standard must be:
- (a) in writing, be in plain language in accordance with Standard No. GEN.S.10.17 – Description of plain language;
 - (b) accurate and not misleading or deceptive;
 - (c) explained to the investor in a manner that will enable the investor to make an informed decision; and
 - (d) provided before entering into an initial transaction with an investor.

(5) The transaction contemplated in this clause relates to where an individual investor intends to, or has been offered to invest, in a CIS or a portfolio of a CIS for the first time, or after material changes have been effected to a CIS or a portfolio of a CIS.

(6) Where an investor, other than an individual investor, requires the information required in or by this section, the manager or operator, authorised representative or a designated representative of a CIS must provide such information to the investor forthwith before entering into any transaction with the investor.

Other information

4. An investor may request other information that may be useful to the investor from a manager, an authorised representative or a designated representative or operator, including:

- (a) an internet or website address, if any, of the manager or operator where investors can obtain information such as the objectives and strategies of the manager or operator, and how to obtain further information;
 - (b) the manager's registration details with NAMFISA or an authorised representative's authorisation by the manager;
 - (c) the operator's registration details with a foreign regulator;
 - (d) the manner in which the manager or operator manages conflicts of interest;
 - (e) a description and identification of any delegated function of manager or operator not provided; and
 - (f) the manner in which the manager or operator ensures the fair treatment of investors.
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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 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;
 - (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 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;
 - (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;
 - (ii) 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; or
 - (iii) 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.

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 or portfolios in accordance with the provisions of the trust 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 confirms in writing that the proposed merger or reorganisation complies with the process outlined in the trust 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 transfer, the manager —
- (a) may not proceed with the transfer; and
 - (b) must inform NAMFISA in writing of such objection within 14 business days.

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 reports;
 - (c) a communication plan for investor notification; and

(d) 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.

FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021**COLLECTIVE INVESTMENT SCHEMES****RULES FOR ADMINISTRATION OF COLLECTIVE INVESTMENT SCHEMES
UNDER ONE OR MORE OF PARTS 3 TO 8 OF CHAPTER 4 AND SOLICITATION
OF INVESTMENTS IN A FOREIGN COLLECTIVE INVESTMENT SCHEME UNDER
PART 9 OF CHAPTER 4****Standard No. CIS.S.4.3**

issued by NAMFISA under section 410(5)(g) 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) “CIS” means a collective investment scheme as defined in section 168 of the Act;
 - (c) “fiduciary duty” has the same meaning as per Standard No. GEN.S.10.2 – Fit and Proper Requirements;
 - (d) “material information” means information that would enable a client or investor to make an informed decision or information that, if not provided, would result in the client or investor not making an informed decision; and
 - (e) “operator” means the operator of a foreign CIS.
- (2) Words and phrases defined in the Act have the same meaning in this Standard, unless the context indicates otherwise, including without limitation, the following -
 - (a) as defined in section 1 of the Act –
 - (i) auditor;
 - (ii) board;
 - (iii) director; and
 - (iv) NAMFISA;
 - (b) “investment manager” as defined in 78 of the Act –
 - (c) as defined in section 168 of the Act –
 - (i) assets;
 - (ii) authorised representative;
 - (iii) collective investment scheme;

- (iv) custodian;
 - (v) designated representative;
 - (vi) investor;
 - (vii) manager;
 - (viii) portfolio; and
 - (ix) trustee;
- (c) “collective investment scheme in participation bonds” as defined in section 201 of the Act;
- (d) “collective investment scheme in unlisted securities” as defined in section 210 of the Act;
- (e) “collective investment scheme in money market instruments” as defined in section 213 of the Act; and
- (f) “foreign collective investment scheme” as defined in section 218 of the Act.

Applicability

2. This Standard applies to a manager in respect of the operation and administration of a CIS in securities, property, participation bonds, unlisted securities and money market instruments and a declared CIS, and to an operator in respect of solicitation of investments in a foreign CIS.

Operation and administration of CIS

3. (1) A manager of a CIS must ensure that the governance arrangements will enable the manager to satisfy the duties set out in section 170 of the Act, including:

- (a) the composition of the board, consisting of an independent chairman and directors;
- (b) the responsibility for risk management and internal controls;
- (c) the employment of fit and proper functionaries with the required skills and experience for the effective and prudent operation of a CIS;
- (d) audit arrangements that are able to provide an objective review of the effectiveness of the financial reporting and risk management, including an independent auditor and audit committee; and
- (e) disclosure to investors of any interests of its directors and management in the CIS.

(2) To ensure that the CIS is administered prudently and for the benefit of investors, a manager of a CIS must adopt and implement policies, procedures and controls that deal with:

- (a) the rights of investors, including accurate records and valuation of assets;
- (b) conflicts of interests, including the avoidance or management of conflicts or potential conflicts;

- (c) transparency and disclosure of material information to investors, timeously;
- (d) the protection of investor assets, including segregation;
- (e) investment of CIS assets by an investment manager or safekeeping or custody of assets by a trustee or custodian;
- (f) execution of investment policies and mandates;
- (g) remedial action where lapses occur; and
- (h) the compliance function in respect of compliance with the Act and other applicable laws.

Solicitation of investments by foreign CIS

4. In the solicitation of investments from investors in Namibia, an operator of a foreign CIS must ensure that the -

- (a) solicitation of investments from potential investors is in accordance with the Act;
- (b) operator complies with the Act and other applicable laws;
- (c) interests of investors are protected;
- (d) operator is transparent and discloses material information to investors timeously;
- (e) governance and audit arrangements are suited to the interests of investors; and
- (f) administration of the CIS is in the best interests of investors.

General

5. A manager and an operator of a CIS owe a fiduciary duty to investors and must ensure that authorised representatives and their designated representatives comply with the requirements of the Act in dealing with investors.

FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021**COLLECTIVE INVESTMENT SCHEMES****MINIMUM INVESTMENT PERIODS FOR INVESTMENTS IN A COLLECTIVE INVESTMENT SCHEME IN PARTICIPATION BONDS****Standard No. CIS.S.4.4**

issued by NAMFISA under section 410(5)(o) 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) “CIS” means a collective investment scheme as defined in section 168 of the Act; and
 - (c) “offer document” means a document containing information about a CIS or a portfolio of a CIS or offer of a participatory interest whether referred to as a prospectus, a fact sheet, notice, circular or by any other name and whether in printed or in electronic form.
- (2) Words and phrases defined in the Act have the same meaning in this Standard, unless the context indicates otherwise, including without limitation, the following -
 - (a) “NAMFISA” as defined in section 1 of the Act;
 - (b) as defined in section 168 of the Act –
 - (i) authorised representative;
 - (ii) collective investment scheme;
 - (iii) deed;
 - (iv) investor;
 - (v) manager; and
 - (vi) participatory interest;
 - (c) “collective investment scheme in participation bonds” as defined in section 201 of the Act.

Applicability

2. This Standard applies to a manager and a CIS in participation bonds.

Minimum investment period

3. (1) An agreement in terms of which a manager accepts money for investment in a collective investment scheme in participation bonds must provide that such money is invested in such scheme for a period of not less than five years.

(2) The deed of a CIS in participation bonds must provide that money received from investors for investments in such CIS in participation bonds must be for a period of not less than five years.

(3) An authorised representative of the manager must inform potential investors of the minimum investment period when soliciting investments.

(4) Upon maturity or expiry of the minimum investment period, an investor has the right to redeem participatory interests unless the investor and the manager agree to extend the investment period, and the extended period is stated in the amended deed and offer document.

(5) Where an investor intends to redeem any participatory interest before the maturity or expiry of the minimum investment period, and a manager is able to redeem such participatory interest of an investor, the manager may redeem the participatory interest as long as the redemption does not in any way prejudice the other investors in the fund.

FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021**COLLECTIVE INVESTMENT SCHEMES****MINIMUM INVESTMENT PERIODS FOR INVESTMENTS IN A COLLECTIVE INVESTMENT SCHEME IN UNLISTED SECURITIES****Standard No. CIS.S.4.5**

issued by NAMFISA under section 410(5)(p) 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) “CIS” means a collective investment scheme as defined in section 168 of the Act; and
 - (c) “offer document” means a document containing information about a CIS or a portfolio of a CIS or offer of a participatory interest whether referred to as a prospectus, a fact sheet, notice, circular or by any other name and whether in printed or in electronic form.
- (2) Words and phrases defined in the Act have the same meaning in this Standard, unless the context indicates otherwise, including without limitation, the following -
 - (a) “NAMFSIA” as defined in section 1 of the Act;
 - (b) “listed securities” as defined in section 78 of the Act;
 - (c) as defined in section 168 of the Act –
 - (i) authorised representative;
 - (ii) collective investment scheme;
 - (iii) deed;
 - (iv) investor;
 - (v) manager;
 - (vi) participatory interest; and
 - (d) “collective investment scheme in unlisted securities” as defined in section 210 of the Act.

Applicability

2. This Standard applies to a manager and a CIS in unlisted securities.

Minimum investment period

3. (1) An agreement in terms of which a manager accepts money for investment in a collective investment scheme in unlisted securities must provide that such money is invested in such scheme for a period of not less than seven years.

- (2) The deed of a CIS in unlisted securities must provide that money received from investors for investment in such CIS in unlisted securities must be for a period of not less than seven years.

- (3) An authorised representative of the manager must inform potential investors of the minimum investment period when soliciting investments.

- (4) Upon maturity or expiry of the minimum investment period, an investor has the right to redeem participatory interests unless the investor and the manager agree to extend the investment period, and the extended period is stated in the amended deed and offer document.

- (5) Where an investor intends to redeem any participatory interest before the maturity or expiry of the minimum investment period, and a manager is able to redeem such participatory interest of an investor, the manager may redeem the participatory interest as long as the redemption does not in any way prejudice the other investors in the fund.

FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021**COLLECTIVE INVESTMENT SCHEMES****ACTIONS THAT NAMFISA MAY TAKE AGAINST MANAGERS AND CONNECTED PERSONS OF FOREIGN COLLECTIVE INVESTMENT SCHEMES OPERATING OR INTENDING TO OPERATE IN NAMIBIA PURSUANT TO SECTION 220(1)****Standard No. CIS.S.4.6**

issued by NAMFISA under section 410(5)(r) of the Financial Institutions and Markets Act, 2021

Definitions

1. (1) In this Standard, “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.

(2) Words and phrases defined in the Act have the same meaning in this Standard, unless the context indicates otherwise, including without limitation, the following:

- (a) “NAMFISA” as defined in section 1 of the Act;
- (b) as defined in section 168 of the Act –
 - (i) collective investment scheme;
 - (ii) investor; and
 - (iii) members of the public;
- (c) “foreign collective investment scheme” as defined in section 218 of the Act; and
- (d) “a person or manager connected with Namibia” or “a person or manager connected with a foreign country” must be read in the context of section 220(2) of the Act.

Applicability

2. This Standard applies to a manager or operator of a foreign collective investment scheme.

Action against person

3. NAMFISA may take the following action pursuant to section 220(1):
- (a) suspend;
 - (b) disqualify; or
 - (c) restrict or partially restrict the administration of the foreign collective investment scheme by the manager or operator connected with Namibia or with a foreign country.
4. Notice may not be served in terms of clause 3 unless –

- (a) it is in public interest; and
 - (b) NAMFISA has consulted the person concerned or, if expedient, a body representing the interest of the person to be affected.
- 5.** A notice in terms of clause 3 must –
- (a) state the grounds on which it is given;
 - (b) identify the country to which the person is connected;
 - (c) specify the date on which such notice comes into force; and
 - (d) provide for a reasonable period to complete performance of transactions entered into before the date on which the notice comes into force or for the termination of contracts of a continuing nature.

General

- 6.** NAMFISA may, provided that it does not prejudice the investors or the public interest, inform the public of the action taken against the person.
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FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021**COLLECTIVE INVESTMENT SCHEMES
REQUIREMENTS WITH RESPECT TO TRUSTEES AND CUSTODIANS OF A
COLLECTIVE INVESTMENT SCHEME****Standard No. CIS.S.4.7**

issued by NAMFISA under sections 190(2) and 410(5)(s) 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) “CIS” means a collective investment scheme as defined in section 168 of the Act; and
 - (c) “representative” means a representative appointed by a trustee or custodian of a CIS pursuant to section 189(6) of the Act.
- (2) Words and phrases defined in the Act have the same meaning in this Standard, unless the context indicates otherwise, including without limitation, the following -
 - (a) “affiliate” as defined in section 1 of the Act; and
 - (b) as defined in section 168 of the Act –
 - (i) assets;
 - (ii) collective investment scheme;
 - (iii) custodian;
 - (iv) investor;
 - (v) manager; and
 - (vi) trustee.

Applicability

2. This Standard applies to a trustee, custodian or an independent representative appointed by a trustee or custodian under section 189(6) the Act, hereinafter referred to, collectively, as a trustee or custodian.

Capital and reserves

3. A trustee or custodian of a CIS must have, and maintain minimum capital and non-distributable reserves, together amounting to not less than N\$5,000,000.00 (five million Namibia dollar) at all times.

General financial and commercial standing

4. A trustee or custodian of a CIS must:
- (a) have adequate human, technical and financial resources to effectively and efficiently execute its duties and functions under the Act;
 - (b) maintain proper control systems, including systems for the safe-keeping and segregation of investor assets;
 - (c) be independent from the manager or an affiliate of the manager; and
 - (d) by reason of the nature of its business, be sufficiently experienced and equipped to perform its duties under the Act and to carry on its business activities in such a way that the performance of its duties or the conduct of its functions promote public confidence in financial markets.

Fitness and propriety

5. In addition to complying with the relevant fit and proper requirements as per Standard No. GEN.S.10.2 – Fit and Proper Requirements, the functionaries of a trustee or custodian of a CIS must:

- (a) be adequately experienced in the operation of a CIS;
 - (b) possess knowledge and understanding of a CIS and be able to operate the CIS efficiently and effectively;
 - (c) know the key regulatory requirements, including fiduciary duties in respect of investors, and comply with the requirements of the Act;
 - (d) be able to act independently and be independent in their decision-making in relation to investors; and
 - (e) apply sound business principles and ensure the financial soundness of the CIS.
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FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021

**COLLECTIVE INVESTMENT SCHEMES
PERMISSIBLE INVESTMENTS, PORTFOLIO COMPOSITION, AND SUBSCRIPTION/
REDEMPTION RULES FOR COLLECTIVE INVESTMENT SCHEMES**

Standard No. CIS.S.4.8

issued by NAMFISA under sections 410(5)(f), 410(5)(i), 410(5)(k), 410(5)(n),
410(5)(o) and 410(5)(u), read with sections 187, 198(2) and 233,
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) “assets in liquid form” means –
- (i) any amount of cash consisting of Bank of Namibia notes and coins;
- (ii) any balance in an account with a -
- (aa) bank;
- (bb) branch of a foreign or CMA entity, which entity is authorised in terms of the Banking Institutions Act, 1998 (Act No. 2 of 1998) to conduct the business of a bank by means of such branch; or
- (cc) foreign bank;
- (iii) any positive net balance in a settlement account, other than a margin account, operated for the buying and selling of underlying assets;
- (iv) money market instruments; or
- (v) participatory interests in a money market portfolio,
- provided that the assets referred to in sub-paragraphs (i), (ii), (iv) and (v) are capable of being converted into cash within seven calendar days, without any penalty on capital in terms of the conditions of the security;
- (c) “bank” means a body of persons authorised to carry on the business of banking within Namibia, and for this Standard includes:
- (i) the Bank of Namibia referred to in section 2 of the Bank of Namibia Act, 2020 (Act No. 1 of 2020);
- (ii) a banking institution defined in section 1 of the Banking Institutions Act, 1998 (Act No. 2 of 1998); and

- (iii) the Post Office Savings Bank as defined in section 1 of the Posts and Telecommunications Act, 1992 (Act No. 19 of 1992);
- (d) “CIS” means a collective investment scheme as defined in section 168 of the Act;
- (e) “Common Monetary Area” or “CMA” means the area in which exchange and monetary arrangements are co-ordinated in accordance with the Multilateral Monetary Agreement concluded on 6 February 1992 between Namibia, the Kingdom of Lesotho, the Republic of South Africa and the Kingdom of Eswatini;
- (f) “CMA bank” means a person authorised or registered to conduct banking business under the laws of any country that forms part of the CMA, excluding Namibia, and which conducts banking business in such a country;
- (g) “deposit” means an amount of money paid by a person to a bank, CMA bank or foreign bank, subject to an agreement in terms of which the full amount of money, or any part thereof, will conditionally or unconditionally and with or without interest or a premium, be repaid to such person –
 - (i) on demand;
 - (ii) at a specified or unspecified date;
 - (iii) after a predetermined period of time;
 - (iv) after a predetermined period of notice of withdrawal; or
 - (v) subject to an agreement entered into by the parties concerned,despite that such repayment is limited to a fixed amount or that a transferable or non-transferable certificate or other instrument providing for the repayment of the amount is issued in respect of such amount;
- (h) “derivative instrument” means a financial instrument or contract that creates rights and obligations, and –
 - (i) that derives its value from the price or value of; or
 - (ii) the value of which may vary depending on a change in the price or value of, some other particular product or thing;
- (i) “financial instrument” means –
 - (i) a listed financial instrument, including –
 - (aa) a futures contract;
 - (bb) an option contract;
 - (cc) a warrant;
 - (dd) an index tracking certificate;

- (ee) an instrument based on any underlying asset or basket of underlying asset; and
 - (ff) any other instrument declared by NAMFISA by notice under section 78(3)(b) of the Act from time to time;
- (ii) an unlisted financial instrument, including –
 - (aa) forward currency swap;
 - (bb) forward currency option issued by a bank;
 - (cc) interest rate swap;
 - (dd) exchange rate swap;
 - (ee) index swap; and
 - (ff) any other instrument declared by NAMFISA by notice under section 78(3)(b) of the Act from time to time;
- (j) “foreign” bears its ordinary meaning, but excludes the CMA and local;
- (k) “foreign bank” means a person authorised or registered to conduct banking business under the laws of any state, country, colony or territory other than Namibia, and which conducts banking business in such other state, country, colony or territory. For the avoidance of doubt, a foreign bank excludes CMA banks, provided Namibia remains a member of the CMA;
- (l) “guarantee” means an undertaking to provide the financial support necessary to ensure full and timely servicing of the debt and redemption of the debt;
- (m) “index” means a group or basket of securities that represents and measures the performance of a specific market, asset class or market sector;
- (n) “issuer” means an issuer of securities;
- (o) “local” means Namibia only;
- (p) “money market instrument” means, subject to sub-clause (3), high quality debt securities issued by government and corporate borrowers, whose maturity or redemption date is up to 13 months, that seek to preserve capital and provide daily liquidity, while offering returns in line with money market rates, and includes a banker’s acceptance, bond, commercial paper, debenture, deposit, negotiable certificate of deposit, state-owned enterprise bill, promissory note, trade bill and treasury bill;
- (q) “NAV” means the “net asset value” of a participatory interest as determined in accordance with Standard No. CIS.S.4.11 – Meaning of “Net Asset Value” for the purposes of section 238 of the Act;
- (r) “non-equity security” means a security issued by an issuer, evidencing or acknowledging the liability of the issuer to repay an amount of money specified in the security, subject to the conditions whereto the security is issued;

- (s) “offer” means to sell or offer to sell for cash any participatory interest to a client or a potential client;
 - (t) “offer document” means a document containing information about a CIS or a portfolio of a CIS or offer of a participatory interest whether referred to as a prospectus, a fact sheet, notice, circular or by any other name and whether in printed or in electronic form;
 - (u) “exchange traded fund” means a fully funded (unleveraged) fund, tracking the performance of a specified security, index or currency, or a company tracking a commodity;
 - (v) “exchange traded notes” means an investment product, in the form of a note, that reflects the linear (on a one for one basis) performance of underlying securities or benchmarks, such as shares or bonds, an index, an exchange rate or a commodity, and is backed by the creditworthiness of the issuer; and
 - (w) “securities” means –
 - (i) shares, preference shares, whether redeemable, convertible or perpetual and exchange depository receipts in public companies, whether listed or not;
 - (ii) listed participatory interests in a CIS in property;
 - (iii) participatory interest in a CIS in participation bonds;
 - (iv) participatory interests in a CIS in securities, whether listed or not;
 - (v) bonds, debentures, debenture stock and debenture bonds;
 - (vi) notes, whether secured or not, and whether or not they have inherent option rights or are convertible;
 - (vii) a derivative instrument and an option, warrant, swap, certificate or other instrument acknowledging, conferring or creating a right to subscribe to, acquire, dispose of, or convert a security;
 - (viii) any asset referred to in the definition of “assets in liquid form” in paragraph (b);
 - (ix) any asset referred to in the definition of “financial instrument” in paragraph (i);
 - (x) any money market instrument as defined in paragraph (p); or
 - (xi) any other instrument declared by NAMFISA by notice under section 78(3) (b) of the Act.
- (2) For purposes of determining any limit in respect of sub-clause (1)(b)(iii), exposure through a settlement account must be added to other exposures to the same issuer or guarantor.
- (3) Money market instruments –
- (a) are high quality debt securities issued by government and corporate borrowers, whose maturity or redemption date is up to one year, and that seek to preserve capital and provide daily liquidity, while offering returns in line with money market rates;

- (b) are short-term fixed income, or income generating, financial instruments that provide a specified amount of interest plus repayment of the principal amount at maturity;
 - (c) offer low risk and are easily converted into cash;
 - (d) are financial instruments that have the objective to provide investors with preservation of capital and daily liquidity;
 - (e) are broadly used by both retail and institutional investors as an efficient way to achieve diversified cash management; and
 - (f) are financial instruments that act as a link between investors seeking investments in liquid assets and diversification of credit risk exposure, and borrowers seeking short-term funding.
- (4) Words and phrases defined in the Act have the same meaning in this Standard, unless the context indicates otherwise, including without limitation, the following –
- (a) as defined in section 1 of the Act –
 - (i) building society;
 - (ii) client; and
 - (iii) NAMFISA;
 - (b) as defined in section 168 of the Act –
 - (i) assets;
 - (ii) collective investment scheme;
 - (iii) custodian;
 - (iv) deed;
 - (v) investor;
 - (vi) manager;
 - (vii) participatory interest;
 - (viii) portfolio; and
 - (ix) trustee.

CHAPTER 1 GENERAL

Applicability

2. This Standard applies to managers, trustees and custodians of CISs.

Prohibition

3. (1) A manager must not sell or offer for sale any participatory interest in a portfolio of securities unless, at the time of selling or such offer, such portfolio consists of assets in the manner, within the limits and on the conditions set out in this Standard and in accordance with the deed.

(2) A trustee or custodian ensure that the basis on which the sale, or offer for sale, of participatory interests effected by or on behalf of a collective investment scheme is carried out in accordance with this Standard and the deed.

Initial size of a portfolio

4. The minimum value of a portfolio at the time a participatory interest is sold or offered for sale must be N\$500,000 and the NAV of the participatory interest must be determined based on this value in accordance with Standard No. CIS.S.4.11 - Meaning of "Net Asset Value" for the purposes of section 238 of the Act.

Manager to make investment in every portfolio

5. A manager must, of its own resources at all times have a minimum invested in every portfolio 10% of the market value of the unit portfolio or invested in every unit portfolio N\$1,000,000.

CHAPTER 2 EQUITY SECURITIES

Conditions and limits of inclusion

6. A manager may include in a portfolio –
 - (a) equity securities issued by any one entity –
 - (i) listed on a local exchange –
 - (aa) with a market capitalisation of less than N\$500 million, up to an amount of 5% of the market value of all the assets comprised in the portfolio; or
 - (bb) with a market capitalisation of N\$500 million or more, up to 10% of the market value of all the assets comprised in the portfolio; or
 - (ii) listed on any other exchange –
 - (aa) with a market capitalisation of less than N\$2 billion, up to an amount of 5% of the market value of all the assets comprised in the portfolio; or

- (bb) with a market capitalisation of N\$2 billion or more, up to 10% of the market value of all the assets comprised in the portfolio;
- (b) 120% of that equity security's weighting in its relevant index, subject to -
 - (i) a maximum of 20% of the market value of all the assets comprising the portfolio where the benchmark is the index representing the overall market or exchange; or
 - (ii) a maximum of 35% of the market value of all the assets comprising the portfolio where the benchmark is an index which is a sub-set of an overall market or exchange index; or
- (c) equity securities of any one class issued by any one entity –
 - (i) with the market capitalisation of less than N\$2 billion, up to 5% of the aggregate amount representing all the equity securities of any one class issued by that entity;
 - (ii) with the market capitalisation of N\$2 billion or more, up to 10% of the aggregate amount representing all the equity securities of any one class issued by that entity; or
 - (iii) which is an investment company, up to 10% of the aggregate amount of the issued securities of any one class issued by any such entity,subject to –
 - (aa) an overall limit of up to 15% of the aggregate amount of equity securities of any one class issued by an entity within the same group as the manager, across the portfolios in all schemes administered by the manager; and
 - (bb) an overall limit of up to 24% of the aggregate amount of equity securities of any one class issued by an entity other than an entity within the same group as the manager, across the portfolios in all schemes administered by the manager.

7. (1) Where a portfolio breaches the limits set out in clause (6)(a) and (b) due to appreciation or depreciation of the market value of the equity securities in that portfolio, or as a result of any non-optional corporate action by the relevant concern, the manager may not purchase any further equity securities issued by that concern for as long as the market value of an equity security in any particular concern exceeds the limit specified in clause (6)(a) and (b).

(2) Where the limits set out in clause 6(c) are breached due to an amalgamation, cession, transfer or take-over in terms of the Act, or as a result of any non-optional corporate action by the relevant entity, the manager –

- (a) may not make any further investments in equity securities of the class in question as long as the limits are exceeded; and
- (b) must, within 12 months after the date on which the amalgamation, cession, transfer, takeover or non-optional corporate action becomes effective, or within such further period as NAMFISA may approve upon application by the manager, reduce the equity securities of the class in question to the determined limits.

8. (1) Subject to sub-clause (4) and clause 11, at least 90% of the market value of an equity securities portfolio must consist of –
- (a) securities traded on an exchange;
 - (b) securities other than exchange securities acquired by the manager pursuant to the exercise of rights attaching to any exchange securities included in the portfolio; or
 - (c) financial instruments including, but not limited to, listed and unlisted securities other than equity securities to the limits determined in clause 10 on condition that –
 - (i) the financial instrument may only be included for purposes of efficient portfolio management with the aim of reducing risk, reducing cost or generating capital or income for the portfolio or to achieve the investment objective of the portfolio within acceptable risk levels; and
 - (ii) the financial instrument is not used to leverage the portfolio, and are at all times covered.
- (2) If any securities which are not listed on an exchange are included in a portfolio, such securities must be valued daily based on a generally recognised methodology and by a person acceptable to the trustee, subject to the requirements of the Act.
- (3) Prior to a manager including any securities in a portfolio, it must ensure that proper investment management processes and controls exist. The trustee or custodian must annually review the effectiveness of the risk management program in identifying, measuring, and adequately covering risks associated with the securities.
- (4) A manager may include in a portfolio, participatory interests in portfolios (“underlying portfolios”) of CISs in securities, including exchange traded funds registered as CISs, CISs in property or of foreign collective investment schemes to a maximum aggregate value of 80% of the market value of the first-mentioned portfolio, provided that –
- (a) (i) the maximum exposure to any one underlying portfolio may not exceed 20% of the market value of the first-mentioned portfolio; or
 - (ii) unless the underlying portfolio is managed by an entity with which the manager is linked by common management or control, or by a substantial direct or indirect holding, and the underlying portfolio is a foreign collective investment scheme, in which case the maximum exposure is 40% of the market value of the first-mentioned portfolio;
 - (b) in the case of an underlying portfolio which is part of a foreign collective investment scheme, the foreign collective investment scheme must –
 - (i) be subject to a due diligence investigation conducted by the manager, to the satisfaction of the trustee, to ascertain whether the portfolio would qualify for approval in terms of the Act and that the portfolio is available for investment and is not otherwise prohibited in its domicile of registration; and
 - (ii) be subject to an annual review by the manager to ensure that it continues to comply with the requirements of the Act if the foreign collective investment scheme has not been approved in terms of the Act;

- (c) in the case of an underlying portfolio that is managed, directly or by delegation, by the same manager or by any other entity with which the manager is linked by common management or control, or by a substantial direct or indirect holding, that manager or other entity may not charge any form of manager's charge (including initial or upfront fees, redemption fees or exit fees) on the underlying portfolio;
- (d) in the case of an underlying portfolio holding participatory interests in other portfolios, each of those portfolios may not constitute more than 20% of their respective investments in other portfolios;
- (e) a manager should only include exchange traded funds or exchange traded notes in a portfolio, and on condition that the exchange traded fund or exchange traded note ordinarily owns the securities as permitted by this Standard; and
- (f) a manager must not include exchange traded funds or exchange traded notes which are capable of obtaining leveraged exposure to underlying assets.

(5) The limit determined in sub-clause (4) may only be exceeded if the excess is due to appreciations or depreciation of the value of the underlying participatory interests constituting the portfolio, and on condition that the manager must not, for as long as the excess continues, purchase any further participatory interests for the portfolio.

(6) The manager must ensure that a portfolio's investment mandate provides for the inclusion of participatory interests in that portfolio.

Classification of preference shares

9. (1) Where a manager includes preference shares in a portfolio, the shares must be treated as equity securities where the issuer of the shares has included them as part of its share capital in its statement of financial position.

(2) Preference shares which do not form part of the share capital of an issuer must be treated as non-equity securities.

CHAPTER 3 NON-EQUITY SECURITIES

10. For the purposes of this Chapter, "Multi-lateral Development Bank" means the World Bank Group, the International Monetary Fund and the African Development Bank.

Conditions and limits of inclusion

11. (1) A manager may include the following non-equity securities, whether listed on an exchange or not, in a portfolio, subject to the limits prescribed in Table 1:

TABLE 1

| Item | Categories of non-equity securities | Limits, being the maximum percentage of the aggregate market value of the portfolio Per issuer/guarantor as applicable |
|-----------|---|---|
| 1. | Non-equity securities issued or guaranteed by: | |
| 1.1 | the Government of Namibia; | 100% |

| | | |
|-----------|--|------|
| 1.2 | CMA (excluding Namibia) government, provided that Namibia remains a member of the CMA – where the GDP of the country concerned exceeds N\$100 billion per government; | 90% |
| 1.3 | a CMA (excluding Namibia) government not included in item 1.2 or a foreign government, where that government's foreign sovereign credit rating is equal to or above the sovereign rating of Namibia; | 90% |
| 1.4 | a CMA (excluding Namibia) government not included in item 1.2 or a foreign government, where that government's foreign sovereign credit rating is below the sovereign rating of Namibia; | 40% |
| 1.5 | a foreign government, which has been assigned a foreign currency sovereign rating not lower than that of Namibia, per government; | 10% |
| 1.6 | the Bank of Namibia; and | 100% |
| 1.7 | a Multi-lateral Development Bank. | 50% |
| 2. | Non-equity securities or guaranteed by a state-owned enterprise, a local authority council or a regional council or equivalent: | |
| 2.1 | Local entities; | 20% |
| 2.2 | Listed instruments issued by CMA (excluding Namibia) equivalent entities; | 15% |
| 2.3 | Listed instruments issued by Foreign equivalent entities; and | 15% |
| 2.4 | Per entity in the CMA (excluding Namibia) or foreign country where the instrument is not listed, and the total assets of the entity exceed N\$5 billion as reflected in the available audited financial statements which are not more than 18 months old. | 5% |
| 3. | Non-equity securities issued or guaranteed by a bank or building society: | |
| 3.1 | which is listed on a local exchange or forms parts of a group (in terms of the Companies Act) of which the holding company is listed on a local exchange with a market capitalisation of not less than N\$ 2 billion; or where the total assets, as reflected in the available audited financial statements which are not more than 18 months old, are not less than N\$ 2 billion; | 30% |
| 3.2 | which is listed on a local exchange or forms parts of a group (in terms of the Companies Act) of which the holding company is listed on a local exchange with a market capitalisation of less than N\$ 2 billion; or where the total assets, as reflected in the available audited financial statements which are not more than 18 months old, are less than N\$ 2 billion; | 20% |
| 3.3 | Non-equity securities issued or guaranteed by a CMA bank or foreign bank which forms part of a group of companies (in terms of international accounting standards) of which the holding company is listed on an exchange: | |
| 3.3.1 | With a market capitalisation for the listed group holding company of more than N\$5 billion; | 30% |
| 3.3.2 | With a market capitalisation for the listed group holding company of between N\$500 million and N\$5 billion; or | 20% |
| 3.3.3 | With a market capitalisation for the listed group holding company less than N\$500 million. | 10% |
| 4. | Non-equity securities issued or guaranteed by local or foreign entities not described above where such security is: | |

| | | |
|-----------|---|-----|
| 4.1 | listed and traded on an exchange; and | 5% |
| 4.2 | not listed on an exchange, including, participatory interests in participation bonds. | 5% |
| 5. | Corporate debt, provided that no inter-company corporate loans, debentures, debenture stock, and debenture bonds, notes or securities in the nature of a loan are made: | |
| 5.1 | Local company where the entity is listed on an exchange with a market capitalisation of not less than N\$500 million; | 20% |
| 5.2 | Local company where the entity is listed on an exchange with a market capitalisation of less than N\$500 million; | 15% |
| 5.3 | Local company where the entity is not listed, with balance sheets of the institution, as reflected in the latest audited annual financial statements which are not more than one year old, are between N\$100 million and N\$500 million; | 10% |
| 5.4 | CMA company (excluding Namibia) where the entity is listed on an exchange with a market capitalisation of not less than N\$2 billion; | 10% |
| 5.5 | CMA company (excluding Namibia) where the entity is listed on an exchange with a market capitalisation of less than N\$2 billion; | 15% |
| 5.6 | CMA company (excluding Namibia) where the entity is not listed with balance sheets as reflected the latest audited financial statements which are not more than one year old, exceed N\$1 billion; | 10% |
| 5.7 | an entity in a country, other than the CMA, where the institution is listed on an exchange with a market capitalisation of not less than N\$5 billion; and | 10% |
| 5.8 | an entity in a country, other than the CMA, where the institution is not listed, with balance sheets as reflected in the latest audited financial statements which are not more than one year old, exceed N\$2 billion. | 5% |

(2) In order to determine the market capitalisation of an internationally listed group holding company, a conversion must be done to Namibia Dollar at the prevailing foreign exchange rate on the date of inclusion and thereafter at least once every 30 calendar days.

(3) The limits determined in Table 1, may only be exceeded if the excess is due to appreciations or depreciation of the value of the underlying participatory interests constituting the portfolio, and on condition that the manager must not, for as long as the excess continues, purchase any further participatory interests for the portfolio.

(4) Despite any limits determined or provisions made in this Standard, in the instance where the portfolio is a fund aiming to closely track an index established by a recognised stock exchange, a maximum limit determined as the constituent weight in the index may be increased by not more than 10 percentage points weight of the constituent weight, the result of this calculation expressed as a percentage of the market value of all the securities comprised in the portfolio.

Exchange Traded Funds / Notes

12. (1) A manager may include in any index tracking portfolio, securities issued by any concern to an amount of 120% of that concern's weighting in a relevant index, subject to a maximum of 35% of the market value of all the assets comprising that portfolio.

(2) The inclusion limits determined in this Chapter will apply, according to the type of instrument it is, irrespective of whether the instrument issued by an exchange traded fund is an equity instrument, a non-equity instrument or a participatory interest of a collective investment scheme.

- (3) The manager must –
- (a) assess the quality of a security, and in doing so, consider all applicable factors including the liquidity profile and the nature of the asset class represented by the security; and
 - (b) in carrying out its due diligence investigation, not place inappropriate reliance on the credit rating of the security.
- (4) The manager must ensure that if the inclusion of instruments in a portfolio will result in further exposure to another issuer whose instruments are already included in the portfolio, the exposure created by the inclusion of the first-mentioned instruments is taken into account when determining the overall permissible exposure to the issuer.

CHAPTER 4 MONEY MARKET PORTFOLIOS

- 13.** For the purposes of this Chapter –
- (a) “interest rate swap” means a transaction for the swap of interest rates;
 - (b) “maturity date” means the date on which an issuer or guarantor is obliged to repay the principal or capital amount and interest due on a money market instrument;
 - (c) “money market portfolio” means a portfolio consisting only of money market instruments in the currency of Namibia;
 - (d) “weighted average duration” means a measure of the average length of time to maturity of all of the underlying instruments in the portfolio weighted to reflect the relative holdings in each instrument, where the maturity of a floating rate instrument is the time remaining until the next interest reset to the money market rate, and not the time remaining before the principal value of the instrument must be repaid; and
 - (e) “weighted average legal maturity” means the weighted average of the remaining life of each instrument held in a portfolio, meaning the time remaining until the principal value is repaid in full or the instrument matures.

Conditions and limits of inclusion

- 14.** (1) A manager may include money market instruments issued or guaranteed by the following entities, whether listed on an exchange or not, in a money market portfolio subject to the conditions, and the limits as specified in Table 2:

TABLE 2

| Item | Categories of money market instruments | Limits being the maximum percentage of the aggregate market value of the portfolio | |
|----------|--|--|---|
| | | Per issuer/guarantor as applicable | In aggregate for all issuers/guarantors as applicable |
| 1 | Money market instruments issued or guaranteed by: | | |
| 1.1 | the Government of Namibia; | 100 | 100% |

| | | | |
|----------|--|------|------|
| 1.2 | CMA government, (excluding Namibia) where the GDP of the country concerned exceeds N\$100 billion per government; | 90% | 100% |
| 1.3 | a CMA government not included in item 1.2 or a foreign government, where that government's foreign sovereign credit rating is equal to or above the sovereign rating of Namibia; | 40% | 100% |
| 1.4 | a CMA government not included in item 1.2 or a foreign government, where that government's foreign sovereign credit rating is below the sovereign rating of Namibia; | 10% | |
| 1.5 | a foreign government, which has been assigned a foreign currency sovereign rating not lower than that of Namibia, per government; | 15% | |
| 1.6 | the Bank of Namibia; and | 100% | 100% |
| 1.7 | a Multi-lateral Development Bank. | 50% | 100% |
| 2 | Money market instruments issued or guaranteed by a State-Owned Enterprises (SOE), local authority council or a regional council or equivalent: | | |
| 2.1 | Local entities; | 20% | 100% |
| 2.2 | CMA (excluding Namibia) equivalent entities; | 15% | 100% |
| 2.3 | Foreign equivalent entities; and | 10% | 100% |
| 2.4 | per entity in the CMA (excluding Namibia) or foreign country, and the balance sheets of the entity exceed N\$5 billion as reflected in the available audited financial statements which are not more than 18 months old. | 5% | |
| 3 | Money market instruments issued or guaranteed by a bank or building society: | | |
| 3.1 | Bank or Building Society (Market Cap or balance sheet > N\$2 billion); | 30% | |
| 3.2 | Bank or Building Society (Market Cap or balance sheet < N\$2 billion); | 20% | |
| 3.3 | CMA Bank (excluding Namibia) (Market Cap > N\$50 billion); | 25% | |
| 3.4 | CMA Bank (excluding Namibia) (Market Cap < N\$50 billion); | 10% | |
| 3.5 | Foreign Bank (Market Cap > N\$50 billion); and | 10% | |
| 3.6 | Foreign Bank (Market Cap <= N\$50 billion). | 5% | |
| 4 | Local or foreign bank which forms part of a group of companies (in terms of the Companies Act or similar legislation in other jurisdictions) of which the holding company is listed on an exchange: | | |
| 4.1 | If the market capitalisation of the entity or its holding company exceeds N\$5 billion; and | 30% | 100% |
| 4.2 | If the market capitalisation of the entity or its holding company is between N\$500 million and N\$5 billion. | 20% | 100% |
| 5 | Corporate debt, provided that no inter-company corporate loans, debentures, debenture stock, and debenture bonds, notes or securities in the nature of a loan are made: | | |

| | | | |
|-----|---|-----|--|
| 5.1 | Local company where the institution is listed on an exchange with a market capitalisation of not less than N\$500 million; | 20% | |
| 5.2 | Local company where the institution is listed on an exchange with a market capitalisation of less than N\$500 million; | 10% | |
| 5.3 | Local company where the institution is not listed, with balance sheets of the institution, as reflected in the latest audited annual financial statements which are not more than 18 months old, are between N\$100 million and N\$500 million; | 10% | |
| 5.4 | CMA company where the institution is listed on an exchange with a market capitalisation of not less than N\$2 billion; | 15% | |
| 5.5 | CMA (excluding Namibia) company where the institution is listed on an exchange with a market capitalisation of less than N\$2 billion; | 10% | |
| 5.6 | CMA (excluding Namibia) company where the institution is not listed with balance sheets as reflected the latest audited financial statements which are not more than 18 months old, exceed N\$1 billion; | 5% | |
| 5.7 | an institution in a country, other than the CMA, where the institution is listed on an exchange with a market capitalisation of not less than N\$5 billion; and | 10% | |
| 5.8 | an institution in a country, other than the CMA, where the institution is not listed, with balance sheets as reflected in the latest audited financial statements which are not more than 18 months old, exceed N\$2 billion. | 5% | |

(2) In order to determine the market capitalisation of a foreign listed group holding company, a conversion must be done to the Namibia Dollar at the prevailing foreign exchange rate at the date of inclusion of the instrument and thereafter at least once every 30 calendar days.

(3) Where, after the date of inclusion of any money market instrument in a money market portfolio, a reduced inclusion limit becomes applicable to that instrument, the manager must rectify the position within 30 calendar days of such reduced limit becoming applicable, on condition that if the manager and the trustee are of the view that rectification would be detrimental to a particular portfolio, the manager must, within seven calendar days of the date of becoming aware of the change in limits, submit a detailed plan setting out measures to rectify the position to NAMFISA for consideration for approval.

(4) Where a manager is unable to comply with any limit prescribed in this clause through no fault of its own, the manager must, if the non-compliance is not rectified within 30 calendar days of the date on which the manager becomes aware of the non-compliance, submit a detailed plan setting out measures to rectify the position to NAMFISA for consideration for approval.

Reduction in value of participatory interests

15. (1) A reduction in value occurs where a loss on a sale or a default of a money market instrument results in a loss greater than the total income accrued in the portfolio in an accounting period.

(2) Within 21 calendar days after any reduction in value, a manager must provide NAMFISA, and every investor in the portfolio, with details of the reduction in writing.

(3) A reduction in value must be reflected in the accounts and returns to be kept and rendered to NAMFISA by the manager in terms of the Act.

General provisions relating to money market portfolios

16. (1) At the time of its inclusion in a money market portfolio, a money market instrument may not have a residual maturity exceeding 13 months.

(2) The weighted average legal maturity of money market instruments included in a money market portfolio, based on the value of the total money market portfolio, may not exceed 182 calendar days.

(3) The weighted average duration of money market instruments included in a money market portfolio, based on the value of the total money market portfolio, may not exceed 180 calendar days.

(4) The following money market instruments may not be included in a money market portfolio -

- (a) money market instruments having no fixed maturity, except CIS in money market instruments (or similar CIS) in jurisdictions which do not provide for a fixed maturity;
- (b) money market instruments whose interest rates are not known at the date of inclusion;
- (c) money market instruments, including, but not limited to, credit linked notes whose return or redemption may be dependent on another instrument or another entity; or
- (d) money market instruments, including, but not limited to, credit linked notes, whose return or redemption may be dependent on any event.

(5) The manager must at all times be able to calculate the return of the money market portfolio.

(6) The manager must assess the quality of a money market instrument, and in making its assessment, the manager must take into account all applicable factors including the liquidity profile and the nature of the instrument.

(7) In carrying out its due diligence investigation, the manager must not place sole reliance on the credit rating of the instrument.

(8) A manager may include in a money market portfolio an interest rate swap on the condition that -

- (a) the interest rate swap applies to a specific money market instrument included in the portfolio;
- (b) the maturity date of the instrument whose rate is being swapped is not extended by the swap agreement;
- (c) the interest rate swap is supported by an International Swaps and Derivatives Association (ISDA) agreement and a credit support annex (CSA); and

- (d) the inclusion of such an interest rate swap is only used for efficient portfolio management with the aim of reducing risk, reducing costs or generating capital or income for a portfolio with an acceptable level of risk and to achieve the investment objective of the portfolio.
- (9) The manager must ensure that an unlisted transaction for the swap of interest rates is not used to leverage or gear the portfolio and is covered at all times.
- (10) Where a manager applies a constant price to a participatory interest of a money market portfolio, the manager must –
- (a) perform a mark-to-market valuation of the money market portfolio and each participatory interest on the last business day of each month to determine the variance of the mark-to-market value with the constant price on a total portfolio basis; and
 - (b) report any such calculation and any adjustment electronically to NAMFISA on the NAMFISA ERS within 15 business days of quarter-end of performing the calculation or adjustment.
- (11) Where a manager applies a variable price to a participatory interest of a money market portfolio, the manager must ensure that the NAV of the portfolio is derived from market rates of the money market instruments constituting the portfolio.
- (12) A manager must implement and apply a risk management programme to each money market portfolio, including stress testing of the portfolio on a quarterly basis, based upon hypothetical and historical events, such as a rise in short-term interest rate, an increase in investor redemptions, a downgrade or series of downgrades on portfolio securities, or a credit event, and taking into account –
- (a) interest rate risk;
 - (b) liquidity risk;
 - (c) spread risk;
 - (d) credit risk; or
 - (e) any combination of paragraphs (a), (b), (c) or (d).
- (13) A money market portfolio's assets in liquid form must amount to at least 5% of the assets in the portfolio.
- (14) Where the exposure of assets in liquid form falls below 5%, immediate and appropriate steps must be taken to correct the breach.
- (15) For the purposes of this clause, assets in liquid form exclude any participatory interests in a money market portfolio.
- (16) The manager must ensure that the money market portfolio does not take direct or indirect exposures to equities or commodities and that the use of derivatives is in line with the investment strategy of the portfolio.
- (17) The manager must, on each business day, reconcile its records showing the amounts held on behalf of each client and the aggregate of client assets as well as those held by third parties.

CHAPTER 5
FUND OF FUNDS PORTFOLIO

17. For purposes of this Chapter and Chapter 6 –
- (a) “fund of funds” means a portfolio that consists of –
- (i) exchange rate swaps (where applicable and permitted in terms of the supplemental deed); or
 - (ii) assets in liquid form and participatory interests, whether listed on an exchange or not,
- in portfolios of collective investment schemes, except participatory interests in collective investment schemes in participation bonds; and
- (b) “feeder fund” means a portfolio that, consists of exchange rate swaps (where applicable and permitted in terms of the supplemental deed), assets in liquid form and participatory interests in a single portfolio of a collective investment scheme in securities, whether listed on an exchange or not.

Conditions and limits of inclusion

18. The conditions and limits subject to which participatory interests in a portfolio may be included in a fund of funds, are as follows:

- (a) The investment in participatory interests by a fund of funds must consist of participatory interests in at least two other portfolios, provided that the investment in any one portfolio may not exceed 75% of the market value of the fund of funds;
- (b) The limit determined in paragraph (a) may be exceeded only if the excess is due to appreciation or depreciation of the value of the underlying participatory interests constituting the portfolio, provided that a manager may not, for as long as the excess continues, purchase any further participatory interests;
- (c) A fund of funds may invest in participatory interests issued by another fund of funds only if that fund of funds holds assets outside Namibia of at least 85% of the value of the fund of funds and where that fund of funds is not invested in another fund of funds or feeder fund;
- (d) A fund of funds may invest in participatory interests issued by a feeder fund only if the feeder fund holds assets outside Namibia of at least 85% of the value of the feeder fund;
- (e) If a manager is unable to comply with the provisions of paragraphs (c) and (d) through no fault of its own, the manager must, if the non-compliance is not rectified within 30 calendar days of the date on which it becomes aware of the non-compliance, submit a detailed plan, setting out measures to rectify the position, to NAMFISA for consideration for approval;
- (f) The investment objectives of a fund of funds must clearly specify the nature of the participatory interests comprising the portfolio;
- (g) Where a manager of a fund of funds includes in a portfolio participatory interests of the portfolios of foreign collective investment schemes referred to in paragraphs (a), (c) or (d) (“underlying portfolios”), the underlying portfolio must –

- (i) have been approved in terms of section 219 of the Act, and be subject to an annual review by the manager to ensure that it continues to comply with the requirements of section 219; or
 - (ii) where the underlying portfolio has not been approved in terms of section 219 of the Act, be subject to a due diligence investigation conducted by the manager, to the satisfaction of the trustee, to ascertain whether the portfolio would qualify for approval in terms of the conditions under section 219(1) of the Act, and that the portfolio is available for investment and is not otherwise prohibited in its domicile of registration;
- (h) Where an underlying portfolio is managed, directly or by delegation, by the same manager as the manager of the portfolio investing in the underlying portfolio or by any other company with which the manager is linked by common management or control, or by a substantial direct or indirect holding, such manager or other company may not charge any form of manager's charge (including initial fees or redemption fees) on that participating interest in the underlying portfolio;
- (i) Where a manager of a fund of funds includes participatory interests of a feeder fund of a foreign collective investment scheme in the portfolio, such feeder fund may not have invested in another feeder fund or a fund of funds;
- (j) For the purposes of this Chapter, the value of a participatory interest held by one portfolio in another must be calculated by reference to the lower of the repurchase price or the net asset value of the relevant participatory interest, at the close of business on the day before the day a repurchase price was calculated;
- (k) To the extent that the assets in a portfolio are exposed to exchange rate risk, a manager may enter into financial transactions for the exclusive purpose of hedging such exchange rate risk subject to the conditions and limits stipulated in Chapter 7, provided that the portfolio's investment policy provides for it to include financial instruments for the exclusive purpose of hedging exchange rate risks; and
- (l) A fund of funds may not consist solely of participatory interests in a money market portfolio.

CHAPTER 6 FEEDER FUNDS PORTFOLIO

Conditions and limits of inclusion

19. The conditions and limits subject to which participatory interests in a portfolio of a collective investment scheme in securities may be included in a feeder fund are as follows:

- (a) A feeder fund may invest in participatory interests issued by a fund of funds only where the fund of funds is domiciled and regulated outside Namibia and where the fund of funds is not invested in another fund of funds or in a feeder fund;
- (b) Where a manager is unable to comply with the provisions of paragraph (a) through no fault of its own, the manager concerned must, within 30 calendar days of the date on which it becomes aware of the non-compliance, submit a detailed plan to NAMFISA for consideration for approval, setting out measures to rectify the position;
- (c) Where a manager of a feeder fund includes in the feeder fund participatory interests of a foreign collective investment scheme ("underlying portfolio"), the underlying portfolio must –

- (i) have been approved in terms of section 219 of the Act, and be subject to an annual review by the manager to ensure that it continues to comply with the requirements of section 219; or
 - (ii) where the underlying portfolio has not been approved in terms of 219 of the Act, the manager must conduct a due diligence investigation to the satisfaction of the trustee to ascertain if such portfolio would qualify for approval in terms of the conditions under section 219(1) of the Act and that such portfolio is available for investment and is not otherwise prohibited in its domicile of registration;
- (d) When an underlying portfolio is managed, directly or by delegation, by the same manager as the manager of the portfolio investing in the underlying portfolio or by any other company with which the manager is linked by common management or control, or by a substantial direct or indirect holding, such manager or other company may not charge any form of manager's charge (including initial fees or redemption fees) on that participating interest in the underlying portfolio;
- (e) For the purposes of this Chapter, the value of a participatory interest held by one portfolio in another must be calculated by reference to the lower of the repurchase price or the net asset value of the relevant participatory interest, at the close of business on the day before the day a repurchase price was calculated;
- (f) To the extent that assets in a portfolio are exposed to exchange rate risk, a manager may enter into financial transactions for the exclusive purpose of hedging such exchange rate risk subject to the conditions and the limits stipulated in Chapter 7, provided that a portfolio's investment policy provides for it to include financial instruments for the exclusive purpose of hedging exchange rate risks; and
- (g) A feeder fund may not consist only of participatory interests in a money market portfolio.

CHAPTER 7

INCLUSION OF CERTAIN FINANCIAL INSTRUMENTS IN A PORTFOLIO

- 20.** For purposes of this Chapter –
- (a) “call option” means an option contract in terms of which the holder of the contract has the right, but not an obligation, to purchase the relevant underlying asset or to receive a cash settlement instead;
 - (b) “contract size” in relation to a financial instrument, means the factor by which the price of an underlying asset is multiplied to arrive at the value of one contract as specified in either –
 - (i) the rules of the relevant exchange on which the financial instrument is listed; or
 - (ii) the terms and conditions as defined in the offering document of the relevant financial instrument;
 - (c) “delta factor”, in relation to a financial instrument, means the requirement for an exposure calculation for financial instruments as determined in accordance with –
 - (i) a method prescribed by the relevant exchange for the specific financial instrument; or

- (ii) the terms and conditions as defined in the offering document of the relevant financial instrument;
- (d) “effective exposure”, in relation to a listed financial instrument, means the exposure as calculated in terms of this Standard;
- (e) “listed financial instrument” means an instrument that is listed and dealt with on an exchange with full membership of the World Federation of Exchanges;
- (f) “put option” means an option contract in terms of which the holder of the contract has the right, but not an obligation, to sell the relevant underlying asset or to receive a cash settlement instead;
- (g) “transaction sign”, in relation to a financial instrument, means the transaction direction, whether buying or selling, of a financial transaction, as calculated in accordance with this Standard;
- (h) “underlying asset”, in relation to a listed or unlisted financial instrument, means -
 - (i) any security;
 - (ii) an index as determined by an exchange;
 - (iii) a group of securities which are the subject matter of the financial instrument, whether such group of securities is represented by an index or not;
 - (iv) a currency rate; or
 - (v) an interest rate; and
- (i) “unlisted financial instrument” means an instrument defined in clause 1(1)(i)(ii) of this Standard.

Inclusion of financial instruments in a portfolio

21. (1) A manager may include listed and unlisted financial instruments in a portfolio, subject to this Standard.

(2) In the application of sub-clause (1), a manager may only write option contracts in compliance with the conditions set out in this Standard, or sell option contracts, which have previously been bought.

Exposure limits for listed financial instruments

22. (1) The combined value of all listed financial instruments and the market value of all physical assets held by the portfolio must not exceed 103% of the portfolio’s total market value.

(2) The combined value of listed financial instruments based on a single underlying asset, excluding indexes or basket of securities, and the market value of any physical holdings of that same underlying asset cannot exceed the limits outlined in clause 6 of this Standard.

(3) For the purposes of this clause, the provisions of clause 7 apply with any necessary adjustments for situations where breaches of these limits occur due to market value changes of the relevant securities, or corporate actions such as mergers, acquisitions, or transfers.

Maintaining of certain assets in a portfolio of listed financial instruments

- 23.** (1) A manager who, in accordance with the provisions of this Standard –
- (a) sells future contracts, call options or call warrants, or buys put options or put warrants, based on specific underlying assets which are not indices or a basket of securities, must maintain an exposure to the market value of such underlying assets which is at least equal to the effective exposures of the mentioned underlying assets;
 - (b) sells futures contracts, call options or call warrants, or buys put options or put warrants, based on index futures or a basket of securities, must maintain an exposure to the same or similar underlying assets or other financial instruments with positive exposures to the same or similar underlying assets in the relevant portfolio, which is at least equal to the effective exposure of such listed financial instruments;
 - (c) buys futures contracts, call options or call warrants, or sells put options or put warrants based on any underlying asset, must maintain an exposure to assets in liquid form, which is at least equal to the effective exposure of such listed financial instruments;
 - (d) sells put options or put warrants, may maintain a bought put option or bought put warrant in place of assets in liquid form as required in paragraph (c) only if the strike price of the bought put option or bought put warrant is not lower than the price of the sold put option or put warrant;
 - (e) sells call options or call warrants, may maintain a bought call option or bought call warrant in place of underlying assets as required in paragraph (a) or (b) only if the strike price of the bought call options or call warrants is lower than the price of the sold call option or call warrant;
 - (f) sells or buys multiple options or multiple warrants or futures based on the same underlying assets which are not indices or a basket of securities with positive net effective exposure, must maintain assets in liquid form as prescribed in paragraph (c);
 - (g) sells or buys multiple options or multiple warrants or futures based on index futures or a basket of securities with positive net effective exposure, must maintain assets in liquid form as prescribed in paragraph (c);
 - (h) sells or buys multiple options or multiple warrants or futures or basket of securities based on the same or similar underlying asset with negative net effective exposure, must maintain assets as prescribed in paragraph (a) or (b) as applicable; or
 - (i) invests in currency futures, must maintain an exposure to assets in liquid form which is at least equal to the effective exposure of such currency futures.

(2) The duration exposure to non-equity securities may be hedged and netted with a financial instrument whose underlying asset is a government bond, a basket of government bonds or a government bond index, a corporate bond, a basket of corporate bonds or a corporate bond index, a local interbank swap rate, inflation rate, the repurchase rate, or any other rate that is an index. However, any consequential or residual spread exposure as a result of the netting must be accounted for and disclosed.

Maintaining of certain assets in a portfolio for unlisted financial instruments

24. (1) A manager, who in accordance with the provisions of this Standard, includes in a portfolio an unlisted financial instrument, must ensure at all times that -

- (a) the net negative mark-to-market exposure of the unlisted financial instrument is at all times covered by assets in liquid form; and
- (b) in the case of net positive mark-to-market exposure of the unlisted financial instruments, the exposure be aggregated to all existing physical underlying assets and effective exposures to the same issuer or guarantor and the aggregate must at all times remain within the limits as set out in Chapter 1 of this Standard.

(2) Netting is only permissible with respect to the same or similar unlisted financial instruments with the same issuer or guarantor, provided that the manager is able to legally enforce netting arrangements with that issuer or guarantor.

(3) The provisions of sub-clause (2) will similarly apply with the necessary changes to unlisted financial instruments.

(4) The manager must ensure that unlisted financial instruments are not used to leverage or gear the portfolio and that the unlisted financial instruments are covered at all times.

Calculation of effective exposure for listed financial instruments

25. (1) The exposure of a futures contract or index tracking certificate of an underlying asset, group of underlying assets or an index must be calculated as the product of –

- (a) the number of contracts;
- (b) the relevant contract size; and
- (c) the current market value of the underlying asset, group of underlying assets or index.

(2) The exposure of an option contract or a warrant to an underlying asset, group of underlying assets, index or index future, must be calculated as the product of –

- (a) the number of option or warrant contracts;
- (b) the relevant contract size;
- (c) the current market value of one relevant underlying asset, one group of the underlying assets, an index or index future; and
- (d) the delta factor.

(3) The effective exposure to any listed financial instrument must be calculated as the product of –

- (a) the exposure, calculated in accordance with sub-clause (1) or (2); and
- (b) the transaction sign.

(4) The transaction sign is positive for any listed financial instrument purchased and negative for any listed financial instrument sold.

(5) The net effective exposure to listed financial instruments on the same or similar underlying asset is the sum of the effective exposures of all the listed financial instruments to the same or similar underlying asset.

CHAPTER 8 FEES, REPURCHASES, AND PORTFOLIO COMPLIANCE

Disclosure of fees

26. For the purposes of clauses 18(c) and (d), and 19(a) of this Standard, when a portfolio invests in participatory interests of another portfolio, the manager must disclose to potential investors, on the application form, the fee structure as well as the anticipated aggregate of the fees levied by itself and by the other portfolio.

Terms of repurchases

27. (1) Where a manager enters into a repurchase agreement, the manager must ensure that –

- (a) the securities which are the subject of such an agreement, and are to be included in a portfolio on the basis that one security has been exchanged for another, are –
 - (i) of equal value; and
 - (ii) included subject to the limits and conditions of this Standard and the investment policy contained in the supplemental deed;
- (b) the portfolio does not suffer losses directly attributable to the repurchase agreement, excluding losses due to market movements; and
- (c) any gains are applied for the benefit of the portfolio.

(2) The manager shall be liable for any losses arising from negligence, misconduct, or breach of fiduciary duty directly attributable to the repurchase agreement excluding losses due to market movements.

Consequences of repurchases

28. (1) Where non-compliance with a condition, limit or requirement set in this Standard occurs because the manager has met its obligation to satisfy offers to repurchase participatory interests, the manager:

- (a) where a limit determined in this Standard is exceeded, may not for as long as such breach continues, purchase any further securities or instruments issued by that entity; or
- (b) where certain assets are not maintained in a portfolio as required by clauses 23 and 24 of this Standard, must take immediate steps to rectify such breach.

(2) Where a breach as set out in sub-clause (1) is not rectified within 30 calendar days of the date on which it occurred, the manager must submit a detailed plan of rectification to NAMFISA.

Operational trust account

29. Any amount deposited, transferred or held in an account determined in section 245 of the Act, operated as an account for funds within a portfolio, must be applied to any limit prescribed in this Standard.

Transitional measures

30. If, after the date of this Standard coming into effect, any limits prescribed are exceeded but the portfolio would have been in compliance with the limits prescribed by the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), the manager may hold the securities exceeding the limits prescribed in this Standard for a period not exceeding 12 months to align the securities to the required limits.

FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021**COLLECTIVE INVESTMENT SCHEMES****REQUIREMENTS FOR THE EXERCISE OF VOTING POWER CONFERRED ON A
MANAGER BY THE ASSETS HELD IN A PORTFOLIO****Standard No. CIS.S.4.9**

issued by NAMFISA under section 410(5)(v) 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) “CIS” means a collective investment scheme as defined in section 168 of the Act;
 - (c) “fiduciary” has the same meaning as in Standard No. GEN.S.10.2 – Fit and proper requirements;
 - (d) “fiduciary duty” has the same meaning as in Standard No. GEN.S.10.2 – Fit and proper Requirements; and
 - (e) “operator” means the operator of a foreign CIS.
- (2) Words and phrases defined in the Act have the same meaning in this Standard, unless the context indicates otherwise, including without limitation, the following -
 - (a) as defined in section 1 of the Act –
 - (i) board;
 - (ii) director; and
 - (iii) NAMFISA;
 - (b) as defined in section 78 of the Act –
 - (i) issuer;
 - (ii) security; and
 - (c) as defined in section 168 of the Act –
 - (i) assets;
 - (ii) collective investment scheme;
 - (iii) custodian;

- (iv) investor;
- (v) manager; and
- (vi) trustee.

Applicability

2. This Standard applies to managers and operators of collective investment schemes of which the assets confer voting rights.

Voting policies and procedures

3. (1) A manager or operator must adopt and implement written voting policies and procedures as part of the CIS governance, and the policies and procedures must, at a minimum, set out:

- (a) the manner in which the manager or operator makes resolutions, including delegation of responsibility, in respect of voting decisions;
- (b) the responsibility, with board oversight, for the voting decisions;
- (c) the controls adopted to deal with material conflicts of interest;
- (d) the manner in which voting decisions may be delegated and what controls are in place to ensure that delegated power is exercised accordingly; and
- (e) the responsibility for and keeping of voting records and disclosure thereof.

(2) The voting policies and procedures must specifically provide and be designed to ensure that the manager or operator -

- (a) monitors corporate actions and events and exercise the implicit or explicit voting power conferred by securities having voting rights;
- (b) exercises any voting power in a manner that best serves the interests of the investors or does not subordinate investor interests to its own or other persons' interests, and ensures that any delegated power is exercised in like manner;
- (c) does not delegate the voting power where voting is absolutely critical to the interests of investors and may have a lasting impact on investors;
- (d) resolves any material conflicts of interest before voting decisions are made;
- (e) manages any material conflicts of interest on an ongoing basis;
- (f) makes independent and objective voting decisions based on publicly available information and the information provided by the trustee or custodian about the issuers of securities or the corporate action or event concerned;
- (g) votes, and does not abstain, when the corporate actions or events are likely to affect investors' interests;
- (h) is able to demonstrate why it has abstained from exercising any voting power;

- (i) or a delegated person, does not use the voting power to subordinate the interests of the issuer of a security conferring voting rights to be exercised; and
- (j) provides a copy of the voting record to investors, upon request.

Exercise of voting power

4. (1) A manager or operator must exercise every voting power conferred on it by assets held in a portfolio in the best interest of the investors, unless the manager is able to demonstrate that it is abstaining or refraining or delegating, as the case may be, for reasons, including but not limited to where:

- (a) the costs of voting may outweigh the benefits;
- (b) voting may not necessarily achieve beneficial ends for the investors; or
- (c) a positive outcome for investors may be achieved without voting.

(2) Where a manager or operator is unable to exercise voting rights, the manager or operator must delegate the voting power to an independent person, such as a trustee or custodian, who must stand in as fiduciary and exercise the voting power.

(3) Where a manager or operator delegates its voting power, the manager or operator must, in accordance with the voting policies and procedures, ensure that the delegated person exercises the voting power in accordance with this Standard and the voting policies and procedures and in the best interests of the CIS investors.

(4) Where the voting power is exercised in a jurisdiction other than Namibia, a manager or operator must ensure that the voting power is exercised in accordance with the applicable laws of that jurisdiction, and that those decisions and voting are entered in the voting record.

(5) A manager or operator and delegated persons owe a fiduciary duty, including a duty of care and a duty of loyalty, to the CIS and investors and must therefore, at all times, act in the best interests of the CIS and investors in exercising the voting power.

(6) The exercise of voting power in a manner that is inconsistent with this Standard and the policies and procedures adopted by the manager or operator and specified by the manager or operator in any relevant mandate, or failure to exercise voting power constitutes an irregular or undesirable act or practice.

(7) Failure to exercise voting power, for the purposes of this Standard, means that a manager, operator or delegated person, having the power, simply failed to exercise the voting power instead of refraining or abstaining, with reasons, from voting.

(8) Where a manager, operator or delegated person fails to exercise the voting power, the manager, operator or that person must immediately enter the failure in the voting record and notify NAMFISA of the reasons for the failure and the potential impact of that failure on the CIS and investors, and a statement of remedial action.

General

5. (1) The policies and procedures may, in an appendix, set out how the manager would vote if presented with specific resolutions of the issuer's board, e.g., for or against unlimited share authorisation, requests for an advisory vote on compensation to reinforce director accountability to the issuer, or on a case-by-case basis.

(2) A manager or operator must keep and maintain a voting record for a period of at least five years from the date of creating, or of making entries into, the record which includes the following at a minimum:

- (a) the voting policies and procedures document;
- (b) statements concerning voting policies and procedures received from issuers or relevant market participants;
- (c) the voting decisions and actual votes or abstentions;
- (d) requests for voting information by investors or NAMFISA; and
- (e) any supporting documents, including for delegation, prepared by the manager or operator that were material to making, or formed the basis for, a decision.

(3) A manager or operator must, upon request, provide a voting record to investors or to NAMFISA, or permit investors to inspect the voting record and to make extracts therefrom at a reasonable cost during office hours of the manager or operator.

FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021**COLLECTIVE INVESTMENT SCHEMES****PERMISSIBLE DEDUCTIONS FROM A PORTFOLIO****Standard No. CIS.S.4.10**

issued by NAMFISA under sections 237 and 410(5)(w) 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; and
 - (b) “CIS” means a collective investment scheme as defined in section 168 of the Act.
- (2) Words and phrases defined in the Act have the same meaning in this Standard, unless the context indicates otherwise, including without limitation, the following -
 - (a) as defined in section 1 of the Act –
 - (i) auditor; and
 - (ii) NAMFISA;
 - (b) as defined in section 78 of the Act –
 - (i) exchange; and
 - (ii) investment manager;
 - (c) as defined in section 168 of the Act –
 - (i) collective investment scheme;
 - (ii) custodian;
 - (iii) deed;
 - (iv) investor;
 - (v) manager;
 - (vi) participatory interest;
 - (vii) portfolio; and
 - (viii) trustee.

Applicability

2. This Standard applies to managers, investment managers, trustees, custodians and any other person determined by NAMFISA.

Permissible deduction

3. (1) A manager and trustee or custodian may allow the deduction of, or deduct, amounts from a portfolio relating to the fees or charges payable in respect of:
- (a) buying and selling of securities on an exchange or otherwise, or depository of securities, including brokerage, or where applicable, marketable securities tax or value-added tax;
 - (b) the auditor's fees and bank charges relating to the scheme or portfolio;
 - (c) the management and administration of the portfolio by the manager;
 - (d) remuneration of a trustee or custodian;
 - (e) investment management services of the investment manager;
 - (f) in the case of a collective investment scheme in property, the costs incurred in the creation and issue of participatory interests, or in listing on an exchange;
 - (g) levies and fees imposed by NAMFISA in terms of the NAMFISA Act or the Act;
 - (h) withholding tax or other tax that may be levied on income accrued to, or earned by investors;
 - (i) stamp duty, where applicable; and
 - (j) other operating expenses of the portfolio or costs imposed by law on the portfolio or the investors.
- (2) A manager of a collective investment scheme and the trustee or custodian must not allow the deduction of any amounts other than the amounts specified in the Act or this standard, or deductions otherwise determined by NAMFISA from time to time by notice in the *Gazette*.

General

4. (1) The deed of a collective investment scheme must clearly set out the method, where applicable, of determining amounts that may be deducted from a portfolio.
- (2) A manager and a trustee or custodian must put policies and procedures in place to ensure compliance with this Standard.
- (3) A manager must state the deductions in detail in the annual financial statements of the collective investment scheme.
-

FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021**COLLECTIVE INVESTMENT SCHEMES****MEANING OF “NET ASSET VALUE” FOR THE PURPOSES OF
SECTION 238 OF THE ACT****Standard No. CIS.S.4.11**

issued by NAMFISA under section 410(5)(x) 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) “CIS” means a collective investment scheme as defined in section 168 of the Act; and
 - (c) “closed-end CIS” means a CIS that issues a fixed number of participatory interests that are not redeemable, that are traded in secondary markets and the market price of which may differ from its NAV price.
- (2) Words and phrases defined in the Act have the same meaning in this Standard, unless the context indicates otherwise, including without limitation, the following -
 - (a) as defined in section 1 of the Act –
 - (i) financial year;
 - (ii) NAMFISA;
 - (b) as defined in section 78 of the Act –
 - (i) exchange;
 - (ii) security; and
 - (iii) transaction;
 - (c) as defined in section 168 of the Act –
 - (i) assets;
 - (ii) custodian;
 - (iii) deed;
 - (iv) investor;
 - (v) manager;

- (vi) operator;
 - (vii) participatory interest;
 - (viii) portfolio;
 - (ix) trustee; and
- (d) collective investment scheme in money market instruments, as defined in section 213 of the Act.

Applicability

2. This Standard applies to collective investment schemes, managers and operators, trustees and custodians.

Meaning of NAV

3. For the purposes of section 238 of the Act:
- (a) “NAV” means the fair value of total assets less the fair value of total liabilities, including permissible deductions of a CIS, other than a CIS in money market instruments, determined in accordance with Standard No. CIS.S.4.14 – Manner and form for registration as manager of a collective investment scheme, or the rules for a CIS;
 - (b) the NAV per participatory interest in a CIS, other than a CIS in money market instruments, equals the NAV divided by the total participatory interests outstanding on the valuation date, including participatory interests created in lieu of income accruals up until the valuation date; and
 - (c) the NAV per participatory interest in a CIS in money market instruments must be based on amortized costs and interest and equals a constant NAV per participatory interest of 100 cents or other constant NAV per participatory interest as set out in the CIS deed.

Determination of NAV

4. (1) Where a manager or operator, trustee or custodian determines the NAV of a participatory interest of a security held in a foreign currency, other than the Namibia Dollar, the manager or operator, trustee or custodian may use the exchange rate on the transaction or valuation date, the marked-to-market value, bid prices or the average of bid-asked prices, or the fair value for translation purposes and must specify the method used in the CIS deed.

(2) Where the assets of a collective investment scheme decrease in value and the decrease is not expected to be temporary, the manager must write off the assets, and where the solvency of assets deteriorated significantly or if more than 90 days passed since the maturity of assets without the CIS receiving the assets, the manager must write off the assets for the purpose of determining the NAV of a participatory interest.

(3) Where a portfolio of a collective investment scheme has more than one class of participatory interest, the manager must determine a portfolio NAV per participatory interest on a pro-rata basis of classes, or both a class NAV and a portfolio NAV, after taking into consideration the expenses incurred in respect of classes and appropriately allocating assets and liabilities to each class to ensure the fair treatment of investors of the same class and different classes.

(4) In determining the NAV per participatory interest, the manager or operator, trustee or custodian owe a fiduciary duty of skill, diligence and care to avoid pricing errors and prejudice to investors.

(5) Where pricing errors occur, the manager must report to NAMFISA and to the investors any error in excess of 0.5% of the NAV per participatory interest, state the nature of the error, provide an explanation for the error, and provide a statement of remedial action.

(6) The manager must determine and publish a class or portfolio NAV per participatory interest in an open-ended CIS on a daily basis, or such other regular intervals suitable to a CIS, in terms of the disclosed valuation and pricing basis adopted by the CIS in accordance with the CIS deed as may be amended from time to time.

(7) In the case of a closed-end CIS, the manager must determine and publish a class or portfolio NAV per participatory interest at least once a year at the financial year end of the CIS, unless the manager shows cause why a NAV cannot be determined and published at financial year end: Provided that the manager determines and publishes a class or portfolio NAV per participatory interest not later three months from the financial year end of the CIS.

(8) The calculation of the NAV of a participatory interest in a CIS, other than a CIS in money market instruments, must be in accordance with the Schedule to this Standard.

(9) Where the calculation of the NAV, for whatever reason, deviates from the Schedule to this Standard, a manager and trustee or custodian must forthwith notify NAMFISA of this with a proposed manner of calculation of the NAV and reasons therefor in writing.

SUPPORTING SCHEDULE

The following supporting schedule is attached to and forms part of this Standard:

Schedule: CALCULATION OF NAV

SCHEDULE (to Standard No. CIS.S.4.11)

CALCULATION OF NAV

| | | | |
|------------|---|-----------|---|
| | A | | Assets, including write offs |
| Less | B | | Liabilities, including permissible deductions |
| Equals | C | $C=A - B$ | Net asset value (NAV) |
| Divided by | D | | Outstanding participatory interests |
| Equals | E | $E=C / D$ | NAV per participatory interest |

FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021**COLLECTIVE INVESTMENT SCHEMES****MATTERS TO BE REGULATED BY DEED****Standard No. CIS.S.4.12**

issued by NAMFISA under section 237 and 410(5)(y) 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; and
 - (b) “offer” means to sell or offer to sell any security to a client or potential client for valuable considerations.
- (2) Words and phrases defined in the Act have the same meaning in this Standard, unless the context indicates otherwise, including without limitation, the following -
 - (a) as defined in section 1 of the Act –
 - (i) financial year; and
 - (ii) NAMFISA;
 - (b) “exchange” as defined in section 78 of the Act;
 - (c) as defined in section 168 of the Act –
 - (i) assets;
 - (ii) collective investment scheme;
 - (iii) custodian;
 - (iv) deed;
 - (v) investor;
 - (vi) manager;
 - (vii) participatory interest;
 - (viii) portfolio; and
 - (ix) trustee.

Applicability

2. This Standard applies to managers, trustees, custodians and any other person designated by NAMFISA by notice in the Gazette.

Matters to be provided in deed

3. (1) A deed of a collective investment scheme, in general, must:
- (a) comply with the requirements of the Act and contain provisions in respect of the matters set out in Schedule 1 to this Standard;
 - (b) provide for the trustee or custodian to hold assets of a portfolio in trust for the investors; and
 - (c) set out risk management strategies, including the identification, evaluation, measurement, management, and mitigation measures.

(2) A deed of a collective investment scheme other than in property, must provide for the requirements applicable to the administration of a collective investment scheme and must, at a minimum, contain provisions in respect of the matters set out in Schedule 2 to this Standard.

(3) A deed of a collective investment scheme in property, must provide for the requirements applicable to the administration of a collective investment scheme in property, and must, at a minimum, contain provisions in respect of the matters set out in Schedule 3 to this Standard.

(4) NAMFISA may by notice in the Gazette exempt a particular type or category of collective investment scheme or a portfolio from the provisions of Schedule 1 or Schedule 2 to this Standard and determine the matters to be complied with or to be provided for in a deed by such type or category of collective investment scheme or portfolio.

SUPPORTING SCHEDULES

The following supporting schedules are attached to and form part of this Standard:

Schedule 1: GENERAL MATTERS WHICH MUST BE PROVIDED FOR IN THE DEED OF COLLECTIVE INVESTMENT SCHEME

Schedule 2: MATTERS WHICH MUST BE PROVIDED FOR IN THE DEED OF COLLECTIVE INVESTMENT SCHEME OTHER THAN PROPERTY

Schedule 3: MATTERS WHICH MUST BE PROVIDED FOR IN THE DEED OF COLLECTIVE INVESTMENT SCHEME IN PROPERTY

SCHEDULE 1 (to Standard No. CIS.S.4.12)**GENERAL MATTERS WHICH MUST BE PROVIDED FOR IN THE DEED
OF COLLECTIVE INVESTMENT SCHEME****General**

1. A deed must in general provide for the:
 - (a) constitution of the scheme;
 - (b) name of collective investment scheme and every portfolio;
 - (c) form of collective investment scheme, including whether open-ended or closed-ended;
 - (d) objectives of collective investment scheme or portfolio;
 - (e) type of scheme as defined in Parts 3, 4, 5, 6, 7, 8 and 9 of Chapter 4 of the Act;
 - (f) date on which the agreement is entered into;
 - (g) name of manager and trustee or custodian;
 - (h) definitions of terms used in the deed;
 - (i) binding nature of deed on manager, trustee or custodian and investors;
 - (j) availability of deed for inspection by investors during office hours;
 - (k) financial year and year-end of scheme and portfolios;
 - (l) annual financial statements and statements to investors;
 - (m) keeping of an investor register; and
 - (n) statement of rights and obligations of investors, manager, trustee or custodian.

Administration

2. A deed must provide for the following in respect of the administration of a collective investment scheme:
 - (a) terms and conditions and termination of appointment of trustee or custodian;
 - (b) the manner in which participatory interests may be sold or transferred;
 - (c) the manner of creating additional participatory interests, where applicable;
 - (d) the determination of yields on participatory interests;
 - (e) charges and fees and the determination of such charges and fees;
 - (f) when and how the charges and fees may be levied;

- (g) the manner of cancelling participatory interests;
- (h) remuneration of trustee or custodian;
- (i) base currency of scheme;
- (j) the manner of obtaining investor consent;
- (k) notices to investors in respect of changes to portfolio;
- (l) the exercise of voting rights in securities held, and proxy voting and handling of conflicts of interests;
- (m) the valuation of participatory interests, including methods or descriptions;
- (n) the provision of statements and frequency of statements to investors, indicating in vested funds;
- (o) the manner in which income and accruals are accounted for and received;
- (p) the manner and timing of distributing income that is distributable; and
- (q) the manner of dealing with participatory interests upon death, insolvency, or disability of investors.

Powers of manager

3. A deed must set out the powers of the manager, including but not limited to:
- (a) formulating a prudent investment policy;
 - (b) investment of scheme assets in accordance with the investment policy;
 - (c) doing all such things and entering into any arrangement as necessary for the administration of the scheme and to achieve the investment objectives of a portfolio;
 - (d) obtaining and acting on advice or information obtained from professional advisers and others considered by it to be experts;
 - (e) ensuring that participatory interests in the scheme are valued and priced in accordance with the deed and the Act;
 - (f) appointing an investment manager, an agent, authorised representative or designated representative to exercise powers and perform duties on its behalf;
 - (g) provision for voting rights on assets and indemnity by the manager and approval by trustee or custodian; and
 - (h) additional duties of the manager which are consistent with those prescribed in the Act.

Assets of scheme or portfolio

4. A deed must prescribe the following in respect of underlying assets:

- (a) the trustee shall, subject to the terms of the deed, hold the underlying securities in the collective investment scheme for the investor;
- (b) any moneys for investment accruing from the issue of participatory interests, dividends, interest or any other income accruing on underlying securities, the proceeds of capital gains, rights or bonus issues and any moneys received by the manager from the realization of underlying securities, shall be handed to the trustee in cash or deposited in a trust account or accounts controlled by the trustee;
- (c) the proceeds of capital gains, rights and bonus issues shall be invested in the collective investment scheme concerned for the benefit of the investor;
- (d) it shall be incumbent upon the manager managing such scheme to repurchase, subject to such terms and conditions as may in terms of the deed apply, any number of participatory interests offered to it, on the basis of prices calculated not more than 24 hours previously or (if during the preceding 24 hours the exchange was closed) on such basis as may be prescribed in the trust deed; and
- (e) any other information that NAMFISA deems necessary.

SCHEDULE 2 (to Standard No. CIS.S.4.12)

**MATTERS WHICH MUST BE PROVIDED FOR IN THE DEED OF COLLECTIVE
INVESTMENT SCHEME OTHER THAN PROPERTY**

1. A deed must provide for the following matters:
 - (a) the investment policy in respect of each portfolio;
 - (b) the manner in which the assets of a portfolio are to be valued for the purposes of determining the selling and repurchase prices of participatory interests;
 - (c) the frequency of determining the selling and repurchase prices of participatory interests, and the specific time at which such determination will be made on a daily basis, which time will be referred to as the valuation time;
 - (d) the basis on which the market value of assets not listed on an exchange would be determined for the purposes of determining the selling and repurchase prices of participatory interests;
 - (e) the manner in which and the time at which the valuation time will be applied to the creation, sale, repurchase or cancellation of participatory interests;
 - (f) the manner in which distributions to investors are to be calculated and settled;
 - (g) the limits, terms and conditions under which scrip may be borrowed or lent;
 - (h) the limits, terms and conditions on which a manager may borrow money for the account of a portfolio;
 - (i) the charges that may be levied and the method of calculation of those charges;
 - (j) written notice of not less than three months to every investor of an increase in any charge and of any change in the method of calculation which could result in an increase or the introduction of any additional charge; and

- (k) the manner in which a deed may be amended.
2. A deed must provide for the following in respect of repurchase of participatory interests:
- (a) compulsory repurchase of any number of participatory interests offered to the collective investment scheme or a portfolio;
 - (b) for the purposes of paragraph (a) and subject to paragraph (d), the manager must determine a cut-off time by when repurchase requests must be received for the purpose determining which valuation time will be used for calculating the prices;
 - (c) the time determined in terms of paragraph (b) may not be changed except upon 30 day's written notice to the investors;
 - (d) when a manager receives a request for the repurchase of participatory interests in circumstances which warrant suspension of the repurchase, the manager:
 - (i) may, with the prior consent of the trustee or custodian; or
 - (ii) must, when the trustee or custodian so requires, suspend the repurchase of the participatory interests, if the manager, trustee or custodian is of the opinion that the circumstances warrant the suspension; and
 - (e) the repurchase of such participatory interests must be settled in accordance with the conditions determined by the NAMFISA.

SCHEDULE 3 (to Standard No. CIS.S.4.12)

MATTERS WHICH MUST BE PROVIDED FOR IN THE DEED OF COLLECTIVE INVESTMENT SCHEME IN PROPERTY

A deed must provide for the requirements applicable to the administration by a manager of a collective investment scheme in property and must, amongst others and as far as applicable, contain provisions regarding the following matters –

- (a) the investment policy in respect of each portfolio;
 - (b) the frequency and basis on which the assets of a portfolio are to be valued;
 - (c) the manner in which participatory interests are to be created or cancelled;
 - (d) the manner in which distributions are to be calculated and settled;
 - (e) the limits, terms and conditions under which a manager may for the account of a portfolio borrow money;
 - (f) the charges that may be levied and the method of calculation of those charges;
 - (g) written notice to every investor of an increase in any charge and of any change in the method of calculation which could result in an increase or the introduction of any additional charge, being not less than three months; and
 - (h) the manner in which a deed may be amended.
-

FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021
COLLECTIVE INVESTMENT SCHEMES
CALCULATION OF FAIR VALUE OF A SECURITY

Standard No. CIS.S.4.13

issued by NAMFISA under section 410(2)(r) 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) “CIS” means a collective investment scheme as defined in section 168 of the Act;
 - (c) “fair value of a security” means a price at which a security would sell in an orderly transaction to a willing buyer at the valuation date;
 - (d) “operator” means the operator of a foreign CIS;
 - (e) “transaction” has the meaning ascribed thereto by section 78 of the Act, insofar as it is applicable in the context of this Standard, and refers to a contract of sale and purchase of a participatory interest; and
 - (f) “valuation date” means the date on which the value of a security is determined or the date at which the value of a transaction is determined.
- (2) Words and phrases defined in the Act have the same meaning in this Standard, unless the context indicates otherwise, including without limitation, the following –
 - (a) “NAMFISA” as defined in section 1 of the Act –
 - (b) as defined in section 78 of the Act –
 - (i) exchange;
 - (ii) listed securities; and
 - (iii) security;
 - (c) as defined in section 168 of the Act –
 - (i) collective investment scheme;
 - (ii) custodian;
 - (iii) manager;
 - (iv) participatory interest;
 - (v) portfolio; and

- (vi) trustee.

Applicability

2. This Standard applies to collective investment schemes, managers and operators, trustees and custodians.

Calculation of fair value

3. (1) A manager or operator must determine the fair value of a security included in a CIS in accordance with this Standard.

- (2) In determining the fair value of a security, a manager or operator must –
- (a) for a listed security, use the valuation date, or current market, price or last price prior to valuation date, and where the security is listed on more than one exchange, the price of the exchange where the security was acquired, or is principally traded;
 - (b) for an unlisted security, use market rates for money market instruments, market comparable values adjusted for liquidity discount for bonds, net realizable value in an arm's length transaction, or acquisition cost;
 - (c) for a participatory interest, use redemption price or realization price, last quoted price, or where these are not available, purchase or acquisition price;
 - (d) for derivative instruments, current market price, i.e., net value on the closing out of a position on valuation date, daily mark-to-market value, expense premium if an option is not exercised or is out-of-money, paid margins plus value of profits and losses, value of comparable listed options, or other valuation methods commonly used by market participants if market prices are not available;
 - (e) for forward contracts, warrants and other instruments (such as swaps or repurchase agreements), use the current or closing market prices and yield curves, paid margins plus profits and losses, net value on the closing out of a position, less dealing costs, or other valuation methods commonly used by market participants if market prices are not available, taking market interest rates into consideration;
 - (f) for money market instruments, use the acquisition cost of the instruments, taking into consideration accrued interest and any holding costs; and
 - (g) for any other security, use valuation methods, including market or transaction comparables approach, adjusted net asset value method, income or cost approach that are commonly used by market participants based on relevant observable inputs.

(3) The determination of the fair value of a security must take into consideration any relevant risk factor that market participants would include in pricing that security, including any restriction on the sale of a security, or factors such as non-controlling interests or illiquidity of a market for a security.

(4) In the determination of the fair value of a security, a manager or operator must ensure consistency and comparability in the valuation and over time, and make full disclosures where material changes in valuation of securities are effected.

FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021
COLLECTIVE INVESTMENT SCHEMES
MANNER AND FORM OF APPLICATION FOR REGISTRATION AS
MANAGER OF A COLLECTIVE INVESTMENT SCHEME

Standard No. CIS.S.4.14

issued by NAMFISA under sections 174, 175 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) “key person” means any person responsible for managing or overseeing, either alone or together with another responsible person, the activities of a financial institution or financial intermediary relating to the rendering of the financial services, and includes those individuals or other entities holding more than 20% of the financial institution or financial intermediary’s voting rights; and
 - (c) “NAMFISA ERS” means the Electronic Regulatory System that facilitates communication between NAMFISA and financial institutions or financial intermediaries.
- (2) Words and phrases defined in the Act have the same meaning in this Standard, unless the context indicates otherwise, including without limitation, the following -
- (a) as defined in section 1 of the Act –
 - (i) auditor;
 - (ii) board;
 - (iii) Companies Act;
 - (iv) document;
 - (v) entity;
 - (vi) financial year;
 - (vii) NAMFISA; and
 - (viii) principal officer; and
 - (b) as defined in section 168 of the Act –

- (i) investment manager;
- (ii) listed securities;
- (iii) manager;
- (iv) members of the public; and
- (v) solicit.

Applicability

2. This Standard applies to all public companies applying for registration as manager of a collective investment scheme (hereinafter referred to as “applicant”).

Application for registration as a manager of a collective investment scheme

3. An application for registration as manager of a collective investment scheme must be made in accordance with clause 4.

Particulars to be furnished upon application

4. For the purposes of section 174(2) of the Act, an application by a public company for registration as manager of a collective investment scheme must –

- (a) be made to NAMFISA in writing;
- (b) provide the particulars specified in:
 - (i) Schedule 1 – Application for Registration as Manager of a Collective Investment Scheme;
 - (ii) Schedule 2 – Additional Registration Requirements; and
 - (iii) Standard No. GEN.S.10.2 – Fit and Proper Requirements;
- (c) be signed by the principal officer or any other person duly authorised to represent the public company; and
- (d) provide proof that the prescribed application fee in terms of Standard No. GEN.S.10.23 - Fees, has been paid.

5. The applicant must disclose all information as required in the Schedules and all parts must be duly completed.

6. (1) An application not complete in all respects and not conforming to the instructions specified in the Schedules may be rejected on the basis of being non-compliant with this Standard.

(2) In instances where the application is deemed incomplete, NAMFISA must give the applicant the opportunity to provide the required information to complete the application. The required information must be provided within the period of seven days, or such other period stipulated or agreed to by NAMFISA, failing which the application shall be rejected.

7. Nothing shall prevent NAMFISA from seeking further or additional information or documents as may be reasonably necessary for processing of the application.

8. The applicant or its duly authorised representative may, if so required, be called to appear before NAMFISA for a personal representation in connection with the application.

Submission

9. (1) An application for registration as a manager of a collective investment scheme must be signed by a duly authorised representative and submitted electronically to NAMFISA on the NAMFISA ERS.

(2) Where necessary and when so directed by NAMFISA, the applicant must submit specified documentation manually to NAMFISA.

SUPPORTING SCHEDULES

The following supporting schedules are attached to and form part of this Standard:

Schedule 1: APPLICATION FOR REGISTRATION AS MANAGER OF A COLLECTIVE INVESTMENT SCHEME

Schedule 2: ADDITIONAL REGISTRATION REQUIREMENTS

SCHEDULE 1 (to Standard No. CIS.S.4.14)**APPLICATION FOR THE REGISTRATION AS MANAGER OF A COLLECTIVE INVESTMENT SCHEME****SECTION A: COMPANY INFORMATION**

A.1 Full name of applicant: _____

A.2 Company Registration No.: _____

A.3 Country of Registration: _____

A.4 If not incorporated in Namibia please provide description of the company:

A.5 Tax Reference No.: _____

A.6 Financial year end: _____

A.7 Nature of business: _____

A.8 Physical address: _____

(If multiple addresses exist in Namibia, provide address of office seeking to establish a business relationship and to enter into a single transaction with the accounting institutions.)

A.9 Postal address: _____

A.10 Email: _____

A.11 Website (if any): _____

A.12 Telephone No.: _____

A.13 Mobile No.: _____

A.14 Telefax No.: _____

A.15 Are you subject to regulation in a foreign country as a financial services intermediary? ____

A.16 If yes, which jurisdiction? _____

A.17 Name of foreign regulator/s? _____

SECTION B: BANKING DETAILS OPERATIONAL ACCOUNT

B.1 Name of Bank: _____

B.2 Branch: _____

B.3 Account No. _____

B.4 Trust Account No. _____

SECTION C: DIRECTORS' DETAILS (All the directors to complete this section on a separate page)

C.1 Full name(s): _____

C.2 Previous surname(s): _____

C.3 Nationality: _____

C.4 Identification No.: _____

C.5 Occupation/Source of Income: _____

C.6 Date of Birth: _____

C.7 Date appointed: _____

C.8 Residential address: _____

C.10. Postal address: _____

C.11 Email address: _____

C.12 Website (if any): _____

C.13 Telephone No.: _____

C.14 Mobile No.: _____

C.15 Telefax No.: _____

SECTION D: KEY PERSONS AND OTHER MANAGEMENT, i.e. CEO, CFO, COMPLIANCE OFFICER, ETC. (All to complete this section on a separate page)

D.1 Full Name(s): _____

D.2 Nationality: _____

D.3 Identification No.: _____

D.4 Date of Birth: _____

D.5 Position: _____

D.6 Date of appointment: _____

D.7 Residential address: _____

- D.8 Postal address: _____

- D.9 Email address: _____
- D.10 Website (if any): _____
- D.11 Telephone No.: _____
- D.12 Mobile No.: _____

SECTION E: SHAREHOLDERS' DETAILS THAT CONTROLS THE APPLICANT ((All the shareholders that control the applicant to complete this section on a separate page)

- E.1 Full name(s): _____
- E.2 Nationality: _____
- E.3 Identification No.: _____
- E.4 Date of Birth: _____
- E.5 Residential address: _____

- E.6 Postal address: _____

- E.7 Email address: _____
- E.8 Website (if any): _____
- E.9 Telephone No.: _____
- E.10 Mobile No.: _____
- E.11 Telefax No.: _____

If more than one such shareholder, please complete and attached share certificate and indicate % held by each:

| Name | Individual | Company | Partnership | Joint Venture | Close Corporation | Other | % held by each |
|------|------------|---------|-------------|---------------|-------------------|-------|----------------|
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

SECTION F: HOLDING COMPANY OF THE APPLICANT COMPANY, IF ANY

- F.1 Company Name: _____
- F.2 Registered Office: _____
- F.3 Company Registration No.: _____

- F.4 Country of incorporation: _____
- F.5 Company name in Country of Incorporation: _____

- F.6 Nature of business: _____
- F.7 Physical address: _____

- F.8 Postal address: _____

- F.9 Email address: _____
- F.10 Website (if any): _____
- F.11 Telephone No.: _____
- F.12 Mobile No.: _____
- F.13 Telefax No.: _____

If more than one holding company, please complete and attach share certificate and indicate % held by each)

| Name | Individual | Company | Partnership | Joint Venture | Close Corporation | Other | % held by each |
|------|------------|---------|-------------|---------------|-------------------|-------|----------------|
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

SECTION G: FINANCIAL SOUNDNESS OF THE APPLICANT

- G.1 The latest audited annual financial statements in respect of the applicant for the last 3 years.
- G.2 Business Plan / Feasibility study indicating projected cash-flows, income and expenditure of the manager for the first three years of operations.

SECTION H: AUDITORS DETAILS (Attach letter from Auditors)

- H.1 Full name of auditors: _____
- H.2 Company Registration No.: _____
- H.3 Tax Reference No.: _____
- H.4 Physical address: _____

- H.5 Postal address: _____

- H.6 Email address: _____

H.7 Website (if any): _____

H.8 Telephone No.: _____

H.9 Mobile No.: _____

H.10 Name of professional regulatory body: _____

H.11 Membership No.: _____

Letter from the Auditors must provide for the following:

1. The auditing firm and responsible partner is independent.
2. The auditing firm ensures that its audit approach is kept up to date with regard to developments in the profession and within financial statements industry.
3. The responsible audit partner has sufficient and relevant knowledge of the industry for the engagement.
4. The responsible audit partner is qualified to act as an auditor as defined in the Act.

SECTION I: TRUSTEE INFORMATION

I.1 Full name of Trustee: _____

I.2 Company Registration No: _____

I.3 Tax Reference No: _____

I.4 Physical address: _____

I.5 Postal address: _____

I.6 Email address: _____

I.7 Website (if any): _____

I.8 Telephone No.: _____

I.9 Mobile No.: _____

SIGNATURE OF PRINCIPAL OFFICER OR AUTHORISED PERSON

By signing the document, I confirm that all the information contained in this application is true and correct and can be relied upon and I have disclosed all necessary material information that may be required by NAMFISA.

Full Names(s): _____

Signature: _____

Capacity: _____

Date: _____

SCHEDULE 2 (To Standard No. CIS.S.4.14)**ADDITIONAL REGISTRATION REQUIREMENTS**

The following information must be provided if not already contained elsewhere in the application.

SECTION A: - MANAGER

Certified copies of the following documents are enclosed. (Please mark appropriate box with an “x”)

| | | YES | NO |
|-----|---|-----|----|
| 1. | Proof of Registration as a Namibian Public Company with the Registrar of Companies (BIPA) | | |
| 2. | An application in writing to NAMFISA, indicating the category of collective investment scheme the manager wishes to establish, operate or control. i.e. a collective investment scheme in listed securities or a collective investment scheme in property share | | |
| 3. | Memorandum and Article of Association | | |
| 4. | Certificate of Incorporation | | |
| 5. | Certificate to commence business | | |
| 6. | Copy of the applicant's company structure/profile and confirmation of operational systems | | |
| 7. | Trust Deed between the Manager and the Trustee. (The model trust deed must be followed as a guide in constructing a trust deed to ensure compliance with requirements of the Act.) | | |
| 8. | A letter from the applicant authorising a person to collect the applicant's certificate of registration from NAMFISA | | |
| 9. | Proof of payment of non-refundable application fee in terms of Standard No. GEN.S.10.23 – Fees | | |
| 10. | Proposed business plan on how the proposed scheme will be operated | | |
| 11. | The business objectives of the proposed scheme including the intended strategies to achieve these objectives and the different phases of achieving such objectives, if not covered in 10 above | | |
| 12. | Tax Certificate from the Receiver of Revenue | | |
| 13. | Auditor's appointment letter | | |
| 14. | Proof of capital employment or existence of the prescribed share capital (paid-up share capital and non-distributable reserves) immediately available for employment in the scheme | | |
| 15. | Proof of paid-up capital and unimpaired reserves in respect of the Trustee (Balance Sheet) | | |
| 16. | Details of the pricing structure of each portfolio | | |
| 17. | Financial soundness of the proposed manager and its shareholders | | |
| 18. | The proposed date of launch of the unit portfolio | | |
| 19. | Relevant completed parts and other information required pursuant to Standard No. GEN.S.10.2 – Fit and Proper Requirements | | |

SECTION B: TRUSTEE

Certified copies of the following documents are enclosed. (Please mark appropriate box with an “x”)

| | | YES | NO |
|----|---|-----|----|
| 1. | Registered Namibian Public Company with the Registrar of Companies (BIPA) | | |
| 2. | Memorandum and Article of Association | | |
| 3. | Certificate of Incorporation | | |
| 4. | Certificate to commence business | | |
| 5. | Copy of the trustee’s company structure/profile and confirmation of operational systems | | |
| 6. | Attach letter confirming proof of required (and maintained) paid-up share and unimpaired reserves | | |
| 7. | Relevant completed parts and other information required pursuant to Standard No. GEN.S.10.2 – Fit and Proper Requirements | | |

THE FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021

COLLECTIVE INVESTMENT SCHEMES

FORM OF CERTIFICATE OF REGISTRATION FOR A MANAGER OF A COLLECTIVE INVESTMENT SCHEME

Standard No. CIS.S.4.15

issued by NAMFISA under section 410(2)(b), read with section 176(3), of the Financial Institutions and Markets Act, 2021

Definitions

1. (1) In this Standard, “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.

(2) Words and phrases defined in the Act have the same meaning in this Standard, unless the context indicates otherwise, including without limitation, the following as defined in section 168 of the Act:

- (a) collective investment scheme; and
- (b) manager.

Applicability

2. This Standard applies to a manager of a collective investment scheme registered pursuant to section 176.

Form of certificate of registration

3. The certificate of registration to be issued pursuant to section 176, must take the form of the Annexure attached to this Standard.

ANNEXURE (to Standard No. CIS.S.4.15)

Registration No

CERTIFICATE OF REGISTRATION

FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021 (ACT NO. 2 OF 2021)

REGISTRATION AS A MANAGER OF A COLLECTIVE INVESTMENT SCHEME

This is to certify that -

_____ (*insert the name*) with
principal office at: _____ (*insert address of principal office*),

has been duly registered in terms of section 176 of the Financial Institutions and Markets Act, 2021, and is authorised to manage a collective investment scheme,

and may operate from Namibia.

CHIEF EXECUTIVE OFFICER

DATE OF REGISTRATION

FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021**COLLECTIVE INVESTMENT SCHEMES****FORM OF THE CERTIFICATE OF REGISTRATION FOR A MANAGER OF A COLLECTIVE INVESTMENT SCHEME IN PARTICIPATION BONDS AND A NOMINEE COMPANY DEEMED TO BE REGISTERED OR APPROVED PURSUANT TO SECTION 202(1)****Standard No. CIS.S.4.16**

issued by NAMFISA under section 410(2)(b), read with section 202(1) and (2), of the Financial Institutions and Markets Act, 2021

Definitions

1. (1) In this Standard, “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.

(2) Words and phrases defined in the Act have the same meaning in this Standard, unless the context indicates otherwise, including without limitation, the following:

- (a) as defined in section 168 of the Act:
 - (i) collective investment scheme;
 - (ii) manager; AND
 - (iii) nominee company;
- (b) as defined in section 201 of the Act:
 - (i) collective investment scheme in participation bonds; and
 - (ii) participation bond.

Applicability

2. Pursuant to section 202 of the Act, this Standard applies to—
- (a) a person carrying on or managing a scheme or arrangement permitting of participation in specified mortgage bonds who was exempted by NAMFISA under section 37(2) (a) of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), who is deemed to be registered as a manager of a collective investment scheme in participation bonds; or
 - (b) a nominee company approved by NAMFISA under section 37(2)(a) of the Unit Trusts Control Act, No. 54 of 1981, who is deemed to be approved as a nominee company.

Form of certificate

3. (1) The certificate of registration as a manager of a collective investment scheme in participation bonds to be issued pursuant to section 202(1), must take the form of Annexure 1 attached to this Standard.

(2) The certificate of approval as a nominee company to be issued pursuant to section 202(1), must take the form of Annexure 2 attached to this Standard.

ANNEXURE 1 (to Standard CIS.S.4.16)

Registration No

CERTIFICATE OF REGISTRATION

FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021 (ACT NO. 2 OF 2021)

REGISTRATION AS A MANAGER OF A COLLECTIVE INVESTMENT SCHEME IN PARTICIPATION BONDS

This is to certify that -

_____ (*insert the name*) with principal office at _____ (*insert the address of principal office*),

has been duly registered in terms of section 176(1), read with section 202(1), of the Financial Institutions and Markets Act, 2021, and is authorised to manage a collective investment scheme in participation bonds,

and may operate from Namibia.

CHIEF EXECUTIVE OFFICER

DATE OF REGISTRATION

ANNEXURE 2 (to Standard CIS.S.4.16)

Registration No

CERTIFICATE OF REGISTRATION

FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021 (ACT NO. 2 OF 2021)

REGISTRATION AS A NOMINEE COMPANY PREVIOUSLY EXEMPTED UNDER SECTION 37(2)(a) OF THE UNIT TRUSTS CONTROL ACT NO. 54 OF 1981

This is to certify that -

_____ (*insert name*) with principal office at _____ (*insert address of principal office*),

has been duly registered in terms of section 184(1), read with section 202(1), of the Financial Institutions and Markets Act, 2021, and is authorised as a nominee for or representative of any person in the holding of any property in trust for such person,

and may operate from Namibia.

CHIEF EXECUTIVE OFFICER

DATE OF REGISTRATION

FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021**MANNER AND FORM OF APPLICATION FOR APPROVAL AS TRUSTEE OR CUSTODIAN OF A COLLECTIVE INVESTMENT SCHEME****Standard No. CIS.S.4.17**

issued by NAMFISA under section 410(2)(c), read with section 190(2) and (3), 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) “key person” means any person responsible for managing or overseeing, either alone or together with another responsible person, the activities of a financial institution or financial intermediary relating to the rendering of the financial services, and includes those individuals or other entities holding more than 20% of the financial institution or financial intermediary’s voting rights; and
 - (c) “NAMFISA ERS” means the Electronic Regulatory System which facilitates communication between NAMFISA and financial institutions or financial intermediaries.
- (2) Words and phrases defined in the Act have the same meaning in this Standard, unless the context indicates otherwise, including without limitation, the following –
 - (a) as defined in section 1 of the Act –
 - (i) banking institution;
 - (ii) board;
 - (iii) director;
 - (iv) document;
 - (v) NAMFISA; and
 - (vi) public company;
 - (b) as defined in section 168 of the Act –
 - (i) authorised representative;
 - (ii) collective investment scheme;
 - (iii) custodian; and
 - (iv) trustee.

Applicability

2. This Standard applies to an entity referred to in section 190(1) of the Act, applying for approval as trustee or custodian of a collective investment scheme (hereinafter referred to as “applicant”).

3. An application for approval as trustee or custodian of a collective investment scheme must be made to NAMFISA in accordance with clause 4.

Particulars to be furnished upon application

4. Pursuant to section 190(2) of the Act, an applicant that intends to apply for approval as a trustee or custodian of a collective investment scheme must –

- (a) be in writing, and provide the particulars as specified in the Schedule, Application form for approval as trustee or custodian of a collective investment scheme;
- (b) be signed by the person duly authorised to represent the applicant;
- (c) be accompanied by proof of registration as a Namibian Company with the Registrar of Companies (BIPA) (CM 1 form);
- (d) be accompanied by its Memorandum and Articles of Association (CM 2 and CM 44 forms);
- (e) be accompanied by a Certificate to commence business (CM 46);
- (f) be accompanied with the details of all directions (CM 29);
- (g) be accompanied by the relevant completed parts and other information required pursuant to Standard No. GEN.S.10.2 – Fit and proper requirements;
- (h) be accompanied by the applicant’s company organogram and confirmation of operational systems;
- (i) be accompanied by details of its bank account with a banking institution;
- (j) be accompanied with details of its nominee company;
- (k) be accompanied by a board resolution authorising the applicant’s representative to apply for approval on behalf of the applicant;
- (l) be accompanied by a detailed business plan;
- (m) be accompanied by proof of sufficient paid-up capital and unimpaired reserves;
- (n) be accompanied by Tax Certificate from the Receiver of Revenue; and
- (o) be accompanied by proof of payment of the required application fee in terms of Standard No. GEN.S.10.23 - Fees.

5. The applicant must disclose all information as required in the Schedule and all parts must be duly completed.

6. (1) An application not complete in all respects and not conforming to the instructions specified in the Schedule may be rejected on the basis of being non-compliant with this Standard.

(2) In instances where the application is deemed incomplete, NAMFISA must give the applicant the opportunity to provide the required information to complete the application. The required information must be provided within the period of seven days, or such other period stipulated or agreed to by NAMFISA, failing which the application shall be rejected.

7. Nothing shall prevent NAMFISA from seeking further or additional information or documents as may be reasonably necessary for processing of the application for approval.

8. The applicant or its duly authorised representative may, if so required, be called to appear before NAMFISA for a personal representation in connection with the application.

Submission

9. (1) An application for cancellation of registration must be submitted to NAMFISA electronically on the NAMFISA ERS.

(2) Where necessary and when so directed by NAMFISA, the applicant must submit specified information or documentation manually to NAMFISA.

SUPPORTING SCHEDULE

The following supporting schedule is attached to and forms part of this Standard:

Schedule: APPLICATION FOR APPROVAL AS TRUSTEE OR CUSTODIAN OF A COLLECTIVE INVESTMENT SCHEME

SCHEDULE (to Standard No. CIS.S.4.17)**APPLICATION FOR APPROVAL AS TRUSTEE OR CUSTODIAN OF A COLLECTIVE INVESTMENT SCHEME****PART 1. COMPANY INFORMATION****SECTION 1: GENERAL**

- 1.1 Full registered name: _____
- 1.2 Previously registered name(s), if any: _____
- 1.3 Trading name(s): _____
- 1.4 Company registration No.: _____
- 1.5 Country of registration: _____
- 1.6 Income Tax registration No. and VAT registration No., if applicable: _____

- 1.7 Financial year-end of the company: _____
- 1.8 Registered address of the company: _____
- 1.9 Principal office address: _____

- 1.10 Postal address: _____
- 1.11 Telephone No: _____
- 1.12 Website, if any: _____
- 1.13 E-mail address: _____
- 1.14 Is the company subject to regulation in a foreign country or a financial services intermediary in a foreign country? _____
- 1.15 If yes, which jurisdiction? _____
- 1.16 Name of foreign regulator(s)? _____

SECTION 2: FINANCIAL RESOURCES

We hereby confirm that the applicant has, at minimum, paid-up share capital adequate for employment in the business and will maintain liquid resources that cover 13 weeks of annual expenditure at all times.

| | |
|-----------------------|------------------------------|
| | Paid-up share capital |
| Paid-up share capital | N\$ |

SECTION 3: AUDITOR

- 3.1 Full name of appointed auditor: _____
- 3.2 Company Registration No.: _____
- 3.3 Auditor's registration number with PAAB: _____
- 3.4 Tax Reference No.: _____
- 3.5 Contact person: _____
- 3.6 Postal address: _____

- 3.7 Physical address: _____

- 3.8 Telephone No.: _____
- 3.9 Email address: _____
- 3.10 Website, if any: _____

SECTION 4: DIRECTORS AND OTHER KEY PERSONS

<Provide details of each director/key person, using a separate sheet as attachment where applicable>

- 4.1 Full names of director/key person: _____

- 4.2 Identification/Passport No.: _____
- 4.3 Nationality: _____
- 4.4 Postal address: _____

- 4.5 Telephone No.: _____
- 4.6 Mobile No.: _____
- 4.7 Email address: _____

SECTION 5: SHAREHOLDER(S) OR OTHER OWNER(S) THAT CONTROLS THE APPLICANT

<Attach the full organigram.

Provide details of each shareholder or other owner that controls the applicant, using a separate sheet as attachment where applicable; if it is a company, provide contact person's details>

- 5.1 Full name/ registered name of shareholder/owner: _____

- 5.2 Previous surname(s) / previously registered name(s): _____

- 5.3 Identification/Passport/Company registration No.: _____
- 5.4 Date of birth/ Date of incorporation: _____
- 5.5 Nationality/Country of incorporation: _____
- 5.6 Postal address: _____

- 5.7 Telephone No.: _____
- 5.8 Mobile No.: _____
- 5.9 Email address of shareholder or contact person: _____
- 5.10 Shareholding percentage:

If more than one shareholder or owner, please complete and attach share certificate and indicate % held by each

| Name | Individual | Company | Partnership | Joint Venture | Close Corporation | Other | % held by each |
|------|------------|---------|-------------|---------------|-------------------|-------|----------------|
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

SECTION 6: HOLDING COMPANY OF THE APPLICANT (IF APPLICABLE)

- 6.1 Full registered name: _____
- 6.2 Previous surname(s) / previously registered name(s): _____

- 6.3 Company registration No.: _____
- 6.4 Date of incorporation: _____
- 6.5 Country of incorporation: _____
- 6.6 Postal address: _____
- 6.7 Registered address: _____
- 6.8 Telephone No.: _____
- 6.9 Email address of contact person: _____

If more than one holding company please complete and attach share certificate and indicate % held by each:

| Name | Individual | Company | Partnership | Joint Venture | Close Corporation | Other | % held by each |
|------|------------|---------|-------------|---------------|-------------------|-------|----------------|
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

SECTION 7: CHIEF EXECUTIVE OFFICER

7.1 Full names: _____

7.2 Identification/Passport No.: _____

7.3 Nationality: _____

7.4 Postal address: _____

7.5 Telephone No.: _____

7.6 Mobile No.: _____

7.7 E-mail address: _____

SECTION 8: APPOINTED PRINCIPAL OFFICER

8.1 Full names: _____

8.2 Identification/Passport No.: _____

8.3 Nationality: _____

8.4 Physical address: _____

8.5 Postal address: _____

8.6 Telephone No.: _____

8.7 Mobile No.: _____

8.8 Email address: _____

SECTION 9: BANK DETAILS (operational account) <Proof of bank account to be attached>

9.1 Name of bank: _____

9.2 Branch name: _____

9.3 Account No.: _____

9.4 Branch code: _____

| |
|---|
| PART 2: OPERATIONAL ABILITY OF APPLICANT |
|---|

BUSINESS PLAN

The business plan of the applicant, that has been approved by the board of directors must at least deal with the following matters:

- (a) Provide an overview of the entity's business operations (company profile, clientele and post-trade offering, Investment Platform, Future Growth, etc.), Corporate Governance Framework, Risk Management Framework, Internal Control Framework, Business Continuity Plan, Systems for Portfolio Management, Agreements with Service Providers (internal and external), Information Technology Systems, Marketing Plan, Human Resources Plan, etc.;
- (b) An explanation of the management structure of the applicant including the names of the individuals responsible for the major functional areas and the number of personnel employed or to be employed in each functional area in the applicant;
- (c) The planned development of the information technology systems and infrastructure of the applicant and arrangements for their supply, management, maintenance, upgrading and security including details pertaining to the method or facility by means of which the business will be carried on;
- (d) The planned approach to qualifying, quantifying and managing risk within the applicant;
- (e) Security procedures to ensure the integrity of the systems for recording transactions and the maintenance of records, the capacity of these systems in relation to the budgeted number of transactions and the back-up resources available in the event of a systems failure; and
- (f) A report by the chairperson of the board of directors confirming that the applicant has adequate systems, procedures and policies in place to protect the information, data, records and documents relating to client accounts and the affairs clients against any unauthorised access, alteration, destruction or dissemination.

SIGNATURE OF PRINCIPAL OFFICER OR DULY AUTHORISED PERSON

By signing the document, I confirm that all the information contained in this application is true and correct and can be relied upon and I have disclosed all necessary material information that may be required by NAMFISA.

Full Names(s): _____

Signature: _____

Date: _____

Capacity: _____

**FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021
COLLECTIVE INVESTMENT SCHEMES**

**APPLICATION BY REGISTERED MANAGER OF A COLLECTIVE INVESTMENT
SCHEME FOR CANCELLATION OF REGISTRATION GRANTED PURSUANT TO
SECTION 176 OF THE ACT OR FOR VARIATION OF THE CONDITIONS FOR
REGISTRATION**

Standard No. CIS.S.4.18

issued by NAMFISA under section 410(2)(c), read with section 178(1) and (2), 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) “special resolution” means a resolution passed by a company as contemplated in sections 207 through to section 211 of the Companies Act; and
 - (c) “NAMFISA ERS” means the Electronic Regulatory System that facilitates communication between NAMFISA and financial institutions or financial intermediaries.
- (2) Words and phrases defined in the Act have the same meaning in this Standard, unless the context indicates otherwise, including without limitation, the following:
 - (a) as defined in section 1 of the Act –
 - (i) auditor;
 - (ii) board;
 - (iii) principal officer; and
 - (iv) NAMFISA;
 - (b) as defined in section 168 of the Act –
 - (i) collective investment scheme; and
 - (ii) manager.

Applicability

2. This Standard applies to a registered manager of a collective investment scheme (hereinafter referred to as “applicant”) applying for cancellation of registration granted pursuant to section 176 of the Act or for variation to the conditions subject to which registration was granted.

3. An application for cancellation of registration granted pursuant to section 176 of the Act or for variation to the conditions subject to which registration was granted must be made to NAMFISA in accordance with clause 4 and submitted to NAMFISA in accordance with clause 9.

Application for cancellation of registration or variation of registration conditions

4. Pursuant to section 178(2) of the Act, an application for cancellation of its registration granted pursuant to section 176 or variation of registration conditions must –

- (a) be in writing, and provide the particulars as specified in the Schedule to this Standard, Application form for cancellation of registration granted pursuant to section 176 of the Act, or for variation of the conditions of registration;
- (b) be accompanied by a copy of the notice published in terms of section 178(3) of the Act;
- (c) be accompanied by the original certificate of registration (declaration under oath where original lost);
- (d) be accompanied by certificates issued by the auditor and trustee/custodian stating that the manager has no liability, or where liability exist, furnish details of measures taken to discharge such liability;
- (e) be accompanied by a bank letter confirming the closure of the bank account(s) opened and operated for purposes of segregating client assets;
- (f) be signed by the principal officer or a person duly authorised¹ to represent the applicant;
- (g) be accompanied by a copy of a special resolution on the decision to cancel its registration granted pursuant to section 176 of the Act or the decision to apply for variation to the conditions; and
- (h) provide proof of payment of the required application fee in terms of Standard No. GEN.S.10.23 – Fees (if any).

5. The applicant must disclose all information as required in the Schedule and all parts must be duly completed.

6. (1) An application not complete in all respects and not conforming to the instructions specified in the Schedule may be rejected on the basis of being non-compliant with this Standard.

(2) In instances where the application is deemed incomplete, NAMFISA must give the applicant the opportunity to provide the required information to complete the application. The required information must be provided within the period of seven days, or such other period stipulated or agreed to by NAMFISA, failing which the application shall be rejected.

7. Nothing shall prevent NAMFISA from seeking further or additional information or documents as may be reasonably necessary for processing of the application.

8. The applicant, its principal officer or a duly authorised person may, if so required, be called to appear before NAMFISA for a personal representation in connection with the application.

¹Applicant to attach a copy of letter or document of authorisation

Submission

9. (1) An application for cancellation of registration must be submitted to NAMFISA electronically on the NAMFISA ERS.

(2) Where necessary and when so directed by NAMFISA, the applicant must submit specified documentation or information manually to NAMFISA.

Effect of cancellation of registration

10. On and from the date of cancellation of the registration, the manager shall cease to act as such.

SUPPORTING SCHEDULE

The following supporting schedule is attached to and forms part of this Standard:

Schedule: APPLICATION FORM FOR CANCELLATION OF REGISTRATION GRANTED PURSUANT TO SECTION 176 OF THE ACT, OR FOR VARIATION OF THE CONDITIONS FOR REGISTRATION

SCHEDULE (to Standard No. CIS.S.4.18)

APPLICATION FORM FOR CANCELLATION OF REGISTRATION GRANTED PURSUANT TO SECTION 176 OF THE ACT, OR FOR VARIATION OF THE CONDITIONS FOR REGISTRATION

Please complete in full:

Indicate whether it is an application for –

Cancellation of registration

OR

Variation to conditions

MANAGER

Full Name:

Company Registration Number:

NAMFISA Registration Number:

Income Tax Number:

CONTACT DETAILS

Physical address:

.....

Postal address:

.....

Tel. Work:

Cell. No:

E-mail address:

DETAILS OF PRINCIPAL OFFICER

First Names:

Surname:

ID/Passport No:

Nationality:

Physical address:

.....

Postal Address:

.....

Tel:

Mobile:

Email address:

DETAIL OF SHAREHOLDER(S)

| Name | Shareholding |
|------|--------------|
| | |
| | |
| | |
| | |

DETAILS OF BOARD OF DIRECTORS

| Name | Nationality | Executive/Non-Executive |
|------|-------------|-------------------------|
| | | |
| | | |
| | | |
| | | |
| | | |

Name of the Board Chairperson:

| Name | Name of Chairperson(s) of committee(s) |
|------|--|
| | |
| | |
| | |
| | |
| | |
| | |

DETAILS OF AUDITOR

Name:

Name of professional regulatory body:

Membership No.:

DETAILS OF TRUSTEE OR CUSTODIAN

.....

SIGNATURE OF PRINCIPAL OFFICER OR DULY AUTHORISED PERSON

By signing the document, I confirm that all the information contained in this application is true and correct and can be relied upon and I have disclosed all necessary material information that may be required by NAMFISA.

Full Names(s):

Signature:

Date:

FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021**COLLECTIVE INVESTMENT SCHEMES****GOVERNANCE****Standard No. CIS.S.4.19**

issued by NAMFISA under sections 410(2)(n) 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) “conflict of interest” means a situation which a director, key person, auditor or 3rd party service provider encounters, while rendering a financial service to a client, if that situation –
 - (i) impairs the objectivity of the director, key person, auditor or 3rd party service provider in any aspect of rendering the financial service to the client; or
 - (ii) prevents a director, key person, auditor or 3rd party service provider from rendering the financial service to the client in an unbiased and fair manner or from acting in the best interest of the client;
 - (c) “executive director” means an individual involved in the day-to-day operations of the regulated entity or its subsidiaries;
 - (d) “executive management” means the team of individuals at the highest level of a regulated entity who are involved in the day-to-day responsibilities of managing the regulated entity and who hold specific executive powers conferred onto them, with and by authority of the board of the regulated entity;
 - (e) “immediate family” means
 - (i) a child, including a step child, child adopted in terms of any law, custom or tradition;
 - (ii) the spouse;
 - (iii) a parent, step parent, grandparent, brother or sister; or
 - (iv) a father-in-law, mother-in-law, sister-in-law or brother-in-law, of the regulated entity’s employee, director or key person;
 - (f) “key person” means any person responsible for managing or overseeing, either alone or together with another responsible person, the activities of a regulated entity, and includes those individuals or other entities holding more than 20% of a regulated entity’s voting rights;

- (g) “non-executive director” means an individual not involved in the day-to-day management and operations of a regulated entity or its subsidiaries.
- (2) A party is related to a regulated entity if the party is –
 - (a) an affiliate of, or an associate of, a regulated entity;
 - (b) in a joint venture with the regulated entity;
 - (c) a member of the executive management;
 - (d) designated key persons of the regulated entity; or
 - (e) considered to be controlled by the regulated entity, pursuant to section 3 of the Act.
- (3) Words and phrases defined in the Act have the same meaning in this Standard, unless the context indicates otherwise, including without limitation, the following:
 - (a) as defined in section 1 of the Act –
 - (i) auditor;
 - (ii) board;
 - (iii) director;
 - (iv) NAMFISA; and
 - (v) principal officer; and
 - (b) as defined in section 168 of the Act –
 - (i) authorised representative;
 - (ii) collective investment scheme;
 - (iii) custodian;
 - (iv) manager;
 - (v) nominee company; and
 - (vi) trustee.

Applicability

- 2. This Standard applies to all regulated entities.
- 3. This Standard must be read with the provisions in the following Standards:
 - (a) Standard No. GEN.S.10.2 – Fit and Proper Requirements;
 - (b) Standard No. GEN.S.10.8 – Independence of directors, members of a board, trustees, custodians, auditors and of any other person required to be independent under the Act;

- (c) Standard No. GEN.S.10.9 – Code of Conduct; and
- (d) Standard No. GEN.S.10.20 – Definition of related party transactions and identifying those that are prohibited under the Act.

PART 1: GOVERNANCE BY THE BOARD

Board's ethical leadership responsibility

- 4.** The board of a regulated entity must –
- (a) provide effective leadership based on an ethical foundation characterised by the ethical values of responsibility, accountability, fairness and transparency;
 - (b) ensure that the responsibilities of the board are consistent with the overriding objectives of the regulated entity;
 - (c) retain ultimate responsibility for the performance, conduct and governance of the regulated entity, even though certain functions are delegated or outsourced to external service providers, and the board may not abdicate any of its functions and responsibilities;
 - (d) be responsible for developing the regulated entity's ethical standards, and such standards must inform all practices, procedures, policies and conduct of the regulated entity;
 - (e) consider the effect of its decisions on all key stakeholders of the regulated entity; and
 - (f) ensure that the regulated entity's ethics performance is assessed, monitored, reported and disclosed in the regulated entity's annual financial statements.

Board composition

5. (1) The board of a regulated entity must consist of executive directors, non-executive directors and independent directors.

(2) The board must appoint a chairperson among its directors.

(3) The board must have a balanced power structure, with one-third of its members being independent directors.

(4) The board must be assisted by a competent, suitably qualified and experienced company secretary.

6. The board of a regulated entity must have necessary qualifications, knowledge, skills and expertise to effectively lead, direct and oversee the regulated entity's business to ensure it is conducted in a sound and prudent manner, and for this purpose –

- (a) the board must collectively and individually have, and continue to maintain, including through training, necessary skills, knowledge and understanding of the regulated entity's business to be able to fulfil their roles;
- (b) the board must have knowledge and skills required for effectively governing a regulated entity, finance, accounting, the role of control functions, investment analysis and portfolio management, and obligations relating to fair treatment of customers; and

- (c) while certain areas of expertise may lie in some but not all members, the collective board must have an adequate spread and level of relevant competencies and understanding as appropriate to the regulated entity's business.

7. The procedures for the appointment of directors must be formal and transparent, and must be considered by the board as a whole and subject to shareholder approval where applicable.

8. The appointment of each director must be formalised through a written agreement between the regulated entity and the director, setting out the key terms of the appointment.

Duties of board chairperson

9. The chairperson of the board must –
- (a) proactively and impartially lead the board, ensuring that the principle of collective responsibility for board decisions is upheld, while at the same time being aware of the individual duties of board members;
 - (b) be independent within the meaning of this Standard;
 - (c) proactively raise issues of concerns on behalf of the board;
 - (d) ensure that the performance of the board as a whole, board committees and the principal officer is reviewed and evaluated on a regular basis, and must manage the performance of members of the board; and
 - (e) preside over board meetings and ensure that time in meetings is used productively.

Independence and conflict of interest

10. A member of the board, principal officer, employee, officers, auditor and other 3rd party service providers must report to the board any conflict of interest encountered before the commencement of their duties and/or during the performance of their duties.

11. There must be a clear identification and separation of operational and oversight responsibilities in the governance of the regulated entity, and the segregation of duties must reflect the nature and extent of the governance risks faced by the regulated entity.

12. The board must –
- (a) demonstrate their independence in the way they exercise any discretion;
 - (b) always consider what is in the best interest of the regulated entity;
 - (c) ensure that appropriate controls exist to –
 - (i) promote the independence and impartiality of the board;
 - (ii) ensure that confidential or privileged information in the possession or under the control of the regulated entity is protected and must only disclose such information as permitted in terms of the law or with the express consent of the relevant person; and
 - (iii) prevent the improper use of privileged or confidential information; and

- (d) ensure that 3rd party service providers do not unduly influence the management of the regulated entity.

13. In addition to the meaning assigned to the term “independent” in Standard No. GEN.S.10.8 - The independence of directors, members of a board, trustees, custodians, auditors and of any other person required to be independent under the Act, for purposes of this Standard “independent director” means a director who –

- (a) is not an employee nor been employed by the regulated entity or related party in any board capacity or executive management within the preceding three years;
- (b) is not associated to an adviser or consultant to the regulated entity;
- (c) is not a material customer or supplier of the regulated entity or has a personal service contract(s) with the regulated entity or a member of the regulated entity’s executive management;
- (d) has no material association or interest with the regulated entity or its related parties that could impair independent judgment;
- (e) is not a recipient of material financial contributions or benefits from the regulated entity that could compromise independence;
- (f) has not had any business relationship with the regulated entity (other than service as a director) for which the regulated entity has been required to make disclosure within the preceding three years;
- (g) is not employed by a public listed company or an unlisted company at which an executive officer of the regulated entity serves as a director;
- (h) is not a close family member of any person described in paragraphs (a) to (g); or
- (i) has not had any of the relationships described in paragraphs (a) to (g) with any affiliate of the regulated entity.

14. An independent director must not be an employee of a regulated entity or an employee of a related party.

Orientation and training of directors

15. New directors must, at the expense of the regulated entity, receive training on both the legislative, regulatory and governance principles to equip them to effectively carry out their functions as directors.

16. The board must seek to enhance its knowledge, where relevant, via appropriate training and training programmes that meet the specific needs of the regulated entity and the individual directors, as may be identified during the annual individual directors’ performance evaluation.

17. Directors must receive regular briefings on matters relevant to the business of the regulated entity, changes in risks and laws applicable to the business of the regulated entity, including accounting standards and policies, and the environment in which it operates.

Performance evaluation of board

18. The board must, at least annually, review its own performance to ascertain whether board members collectively and individually remain effective in discharging the respective roles and responsibilities assigned to them and identify opportunities to improve the performance of the board.

19. The board must implement appropriate measures to address any identified inadequacies, including any training programmes for continuous development of board members.

20. Subject to the Act, the board must ensure that –

- (a) the evaluation of the board, its committees and individual directors is performed annually against the board's determined roles, functions, duties and performance criteria, as well as those for members of board committees;
- (b) the past performance as a board member must be taken into account when directors are nominated for re-appointment or re-election;
- (c) evaluations must be conducted by the chairperson who must ensure that directors know that they will be subject to evaluation, that they understand the criteria used for evaluation and that they understand the evaluation procedures that will be followed;
- (d) the board, except the principal officer, must evaluate the chairperson's performance; and
- (e) the performance of the principal officer is evaluated at least annually.

21. The board may consider the use of external expertise from time to time to undertake its performance assessment where appropriate to enhance the objectivity and integrity of that assessment process.

Internal audit

22. The board must consider whether the structure and operations of the regulated entity warrant the establishment of an internal audit function, which may be provided at the level of the entity or at group level.

23. (1) Where the board decides to introduce an internal audit function, the board must ensure that –

- (a) there is an effective risk based internal audit function;
- (b) in the event that the internal audit function is outsourced, the board is ultimately responsible to oversee, manage, inform and take accountability for the effective functioning of the outsourced internal audit function;
- (c) the board is ultimately responsible for the appointment and performance assessment of the head of internal audit;
- (d) internal audit must pursue a risk based approach to planning as opposed to a compliance based approach that is limited to evaluation of adherence to procedures; and
- (e) internal controls must be established not only over financial matters, but also operational, compliance and sustainability matters to prevent, eliminate or manage risks faced by the regulated entity.

(2) Where the internal audit function is provided at group level, the board of the entity must satisfy itself that the function has direct and unrestricted access to the entity's Audit Committee, and that its coverage, scope, and reporting arrangements are appropriate to the entity's risks and regulatory obligations.

Board committees

24. Pursuant to section 398 of the Act, the regulated entity's board may set up committees necessary to ensure effective oversight of key areas of risk, compliance and strategic importance, including but not limited to –

- (a) investment;
- (b) risk management;
- (c) ethics;
- (d) nomination and remuneration;
- (e) information technology.
- (f) code of conduct; and
- (g) succession planning.

25. The terms of reference of a committee of the board must, at a minimum, cover –

- (a) the composition of the committee;
- (b) the objectives, purpose and functions of the committee;
- (c) delegated authorities, including the extent of power to make decisions or recommendations or both;
- (d) tenure; and
- (e) reporting mechanism to the board.

26. Every member of a board committee must, as far as is reasonably possible, be suitably skilled and experienced to serve on such committee.

Board Policies

27. Pursuant to clause 22, regulated entities must establish and maintain a comprehensive suite of governance policies that reflects its key operational, ethical, regulatory and strategic responsibilities, including but not limited to –

- (a) investment management;
- (b) risk management;
- (c) conflict of interest;
- (d) complaints management;
- (e) information technology;

Tenure of office

28. (1) To ensure independence and reduce the risk of familiarity, no non-executive director may serve for more than three consecutive terms, and the tenure for one term may not exceed a period of three years.

(2) After serving three consecutive terms, a minimum three- year cooling-off period must elapse during which the individual holds no employment, directorship, advisory role, or other significant relationship with the regulated entity, before being eligible for re-appointment as a non-executive director.

Appointment of external auditor

29. (1) To ensure independence and reduce the risk of familiarity in respect of the auditor of the regulated entity, the auditor must be appointed for a fixed period and –

- (a) the auditor may not serve for more than five consecutive years unless otherwise approved by the Regulator; and
- (b) the auditor must comply with the partner rotation requirements prescribed by the Code of Ethics issued by the International Ethics Standards Board for Accountants.

(2) After serving as the auditor for the maximum period of five consecutive years, a minimum period of at least three years must lapse before the same auditor may be appointed again.

Rotation and succession

30. The board must set periodic, staggered rotation or tenure limits for directors and committee chairs, to balance fresh perspectives with continuity, retain valuable expertise, and prevent undue concentration of power.

Filling of vacancies on the board

31. The board must fill vacancies, inclusive of interim vacancies, required by the rules of the regulated entity within a reasonable time from when the vacancy arose.

PART 2: GOVERNANCE OF THE OPERATIONS OF THE REGULATED ENTITY**Role of the board in setting the regulated entity strategy**

32. The board must be responsible for the determination and approval of the long-term and short-term strategies of the regulated entity and monitor implementation thereof by management or the service provider to whom services have been outsourced, if any.

33. Before approving the strategy, the board must ensure that the strategy is aligned with the Act and any relevant legislation, the purpose or object of the regulated entity, the value drivers of the regulated entity's business and the legitimate interests and expectations of the regulated entity's stakeholders.

34. The board must identify key performance and risk areas as well as the associated performance and risk indicators and measures, across key functions and areas of the regulated entity.

Internal controls

35. The board must ensure that there are adequate internal controls in place to ensure that all persons and entities with operational and oversight responsibilities act in accordance with the objectives required by the rules of the regulated entity, the Act and any other applicable law.

36. Internal controls must cover all basic organisational and administrative procedures and, depending upon the scale and complexity of the regulated entity, the internal controls must include performance assessment, compensation mechanisms, information systems and processes, risk and compliance management procedures.

37. Appropriate policies guiding the governance and operations must be adopted and implemented by the board.

38. The oversight responsibilities of the board requires that there must be –

- (a) a regular assessment of the performance of the persons and entities involved in the operations of the regulated entity in terms of service level agreements, mandates, and performance contracts;
- (b) a regular review of services and fees and all costs associated with the operations of the regulated entity to ensure that they are appropriate;
- (c) a regular review of the information processes, operational software systems and accounting and financial reporting systems involved in the operation of the regulated entity;
- (d) the monitoring and resolution of actual, potential or perceived conflict of interest amongst those involved in the operation of the regulated entity;
- (e) the protection of confidential information of the regulated entity; and
- (f) regular review of compliance with regulatory and statutory requirements of the regulated entity.

Expert advice

39. Where the board lacks sufficient expertise to make fully informed decisions and to fulfil its responsibilities, it may seek expert advice.

40. The board must satisfy itself that any expert advice obtained is independently given and where the professional gives expert advice in respect of a service provider, the board must satisfy itself that such advice is not compromised by the relationship of that professional or their firm to that service provider.

41. The board must assess and satisfy itself that any expert advice received is of quality, it must verify that all its professional staff and external service providers have adequate qualifications and experience, and the board is not obliged to accept the advice but must consider the appropriateness of such advice.

Risk management

42. Subject to the Act –

- (a) the board may delegate oversight of the regulated entity's risk management function to an appropriate board committee; and
- (b) the board must ensure that the frameworks and processes in place to assist in anticipating these risks have the following characteristics:
 - (i) insight - the ability to identify the cause of the risk, where there are multiple causes or root causes that are not immediately obvious;

- (ii) information - comprehensive information about all aspects of risks and risk sources, especially of financial risks;
- (iii) incentives - the ability to separate risk origination and risk ownership ensuring proper due diligence and accountability;
- (iv) instinct - the ability to avoid following the herd when there are systemic and pervasive risks;
- (v) independence - the ability to view the regulated entity independently from its environment; and
- (vi) interconnectivity - the ability to identify and understand how risks are related, especially when their relatedness might exacerbate the risk.

43. The board must have in place a risk management policy which must be reviewed regularly, but at least every three years, and must include –

- (a) the identification of risks facing the regulated entity;
- (b) the assessment of the likelihood of each such risk on the regulated entity;
- (c) the assessment of the impact of each such risk to the regulated entity;
- (d) the process or controls necessary to reduce the impact of key risks;
- (e) the monitoring of the risk process or controls to ensure that they are appropriate; and
- (f) the communication to the stakeholders of the regulated entity's risk management policy, including the identification of the key risks and the processes or controls in place to prevent, eliminate or manage them.

44. The board must ensure that the regulated entity considers and implements appropriate risk responses.

45. The regulated entity must identify and consider different ways that it can respond to the risks identified during the risk assessment process and these responses must be noted in a risk register.

46. The regulated entity must be able to demonstrate that the risk management process provides for the identification and exploitation of opportunities to improve its performance.

47. The risks to be identified must not be limited to those which have a financial consequence but must include risks which relate to the governance of the regulated entity, and which may jeopardise the governance structure.

48. The regulated entity is not expected to micro-manage the functions delegated to service providers, but those functions must, when delegated, contain sufficient detail to ensure that the service provider understands what is expected by the board and provide for reasonable right of recourse if there is any breach of the delegated functions by the service provider.

49. The board must receive assurance regarding the effectiveness of the risk management process for outsourced or delegated functions.

50. The board must ensure that there are processes in place enabling complete, timely, relevant, accurate and accessible risk disclosure to relevant stakeholders.

Regulated entity expenses

51. The board must perform regular review of services, against set performance standards, fees and all costs associated with the operation of the regulated entity to ensure that they are appropriate.

52. The board must ensure that the costs and expenses of the regulated entity are managed efficiently.

PART 3: MANAGEMENT OF STAKEHOLDER RELATIONSHIPS**Regulated entity information and access to regulated entity information**

53. Subject to the Act, the board must ensure that –

- (a) directors have unrestricted access to all relevant information relating to the regulated entity to enable them to make informed decisions;
- (b) all regulated entity information is confidential and must not be released to any person unless such person has a lawful right thereto, and where this information is held by a service provider, the service provider will preserve its confidentiality and return the information to the regulated entity when the relationship with the service provider is terminated;
- (c) the board is the ultimate custodian of the corporate reputation and stakeholder relationships, and the board must take account of and respond to the legitimate interests and expectations of stakeholders in its decision-making;
- (d) stakeholder interests and expectations, even if not considered warranted or legitimate, must be dealt with and not ignored; and
- (e) communication with relevant stakeholders, must be responded to promptly by or on behalf of the board and with thoroughness.

Information technology governance

54. The regulated entity must understand the strategic importance of information technology and manage the associated risks, benefits and constraints and the responsibility for the information technology function must be assumed by the board.

55. Information technology must be aligned with the performance and sustainability objectives of the regulated entity.

56. The board must ensure that information and information technology assets are managed effectively.

57. Where the administrative function of information technology is outsourced to a service provider, the board must obtain the necessary assurances and satisfy itself that the information technology risks are managed effectively by the service provider in accordance with best practice principles of information technology governance and risk management.

58. The risk or audit function must consider information technology risk as a crucial element of the effective oversight of the risk management of the regulated entity.

59. In understanding and measuring information technology risks, the risk or audit function must understand the regulated entity's overall exposure to information technology risk from a strategic and business perspective, including the areas of the business that are most dependent on information technology for effective and continual operation.

Reporting

60. Reporting channels between all the persons and entities involved in the governance of the regulated entity must be established to ensure the effective and timely transmission of relevant and accurate information.

Disclosure

61. The board must disclose relevant information to relevant persons, notably employees, clients, supervisory authorities and auditors, in a clear, accurate and timely manner.

Non-compliance

62. NAMFISA may take appropriate enforcement action in terms of Part 6 of Chapter 10 of the Act for non-compliance with this Standard.

FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021**COLLECTIVE INVESTMENT SCHEMES
MANNER AND FORM OF APPLICATION FOR APPROVAL AS A NOMINEE COMPANY****Standard No. CIS.S.4.21**

issued by NAMFISA under sections 410(2)(c) and 410(5)(e), read with 184(1), (2) and (3) 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) “key person” means any person responsible for managing or overseeing, either alone or together with another responsible person, the activities of a financial institution or financial intermediary relating to the rendering of the financial services, and includes those individuals or other entities holding more than 20% of the financial institution or financial intermediary’s voting rights; and
 - (c) “NAMFISA ERS” means the Electronic Regulatory System which facilitates communication between NAMFISA and financial institutions.
- (2) Words and phrases defined in the Act have the same meaning in this Standard, unless the context indicates otherwise, including without limitation, the following –
- (a) as defined in section 1 of the Act –
 - (i) auditor;
 - (ii) Companies Act;
 - (iii) financial intermediary; and
 - (iv) NAMFISA;
 - (v) officer;
 - (b) as defined in section 168 of the Act –
 - (i) authorised representative; and
 - (ii) nominee company.

Applicability

2. This Standard applies to all public companies applying for approval as a nominee company (hereinafter referred to as “applicant”).

Application for approval as a nominee company

3. An application for approval as a nominee company must be made to NAMFISA in accordance with clause 4.

Particulars to be furnished upon application

4. For the purposes of section 184 of the Act, an application for approval as a nominee company must –

- (a) be in writing and provide the particulars as specified in the Schedule to this Standard, Application Form for approval as a nominee company;
- (b) be signed by a person duly authorised to represent the applicant¹;
- (c) be accompanied by the relevant completed parts and other information required pursuant to Standard No. GEN.S.10.2 – Fit and Proper Requirements; and
- (d) be accompanied by provide proof of payment of the required application fee in terms of Standard No. GEN.S.10.23 - Fees.

5. The applicant must disclose all information as required in the application form, supported by the necessary enclosed documents, and all parts must be duly completed.

6. (1) An application not complete in all respects and not conforming to the instructions specified may be rejected on the basis of being non-compliant with this Standard.

(2) In instances where the application is deemed incomplete, NAMFISA must give the applicant the opportunity to provide the required information to complete the application. The required information must be provided within the period of seven days, or such other period stipulated or agreed to by NAMFISA, failing which the application shall be rejected.

7. Nothing shall prevent NAMFISA from seeking further or additional information or documents as may be reasonably necessary for processing of the application for approval.

8. The applicant or its duly authorised representative may, if so required, be called to appear before NAMFISA for a personal representation in connection with the application.

Independence requirements

9. The applicant's appointed directors and officers must comply with Standard No. GEN.S.10.8 - The independence of directors, members of a board, trustees, custodians, auditors and valuers and of any other person required to be independent under the Act or Standard.

Submission

10. (1) An application for approval as a nominee company must be submitted to NAMFISA electronically on the NAMFISA ERS.

(2) Where necessary and when so directed by NAMFISA, the applicant must submit specified documentation manually to NAMFISA.

¹ Applicant to attach a copy of the letter or document of authorisation.

SUPPORTING SCHEDULE

The following supporting Schedule is attached to and forms part of this Standard:

Schedule: APPLICATION FORM FOR APPROVAL AS A NOMINEE COMPANY

SCHEDULE (to Standard No. CIS.S.4.21)

APPLICATION FORM FOR REGISTRATION AS A NOMINEE COMPANY

An application for approval as a nominee company, in terms of section 184 of the Financial Institutions and Markets Act, 2021 (Act No. 2 of 2021), must be made by a company and comply with the requirements and be accompanied by the information and documentation set out herein:

| |
|----------------------|
| <p>PART 1</p> |
|----------------------|

| |
|-----------------------------------|
| <p>COMPANY INFORMATION</p> |
|-----------------------------------|

SECTION 1: GENERAL

- 1.1 Full registered name: _____
- 1.2 Previously registered name(s), if any: _____
- 1.3 Trading name(s): _____
- 1.4 Company registration No.: _____
- 1.5 Country of registration: _____
- 1.6 Income Tax registration No. and VAT registration No., if applicable: _____

- 1.7 Financial year-end of the company: _____
- 1.8 Registered address of the company: _____
- 1.9 Principal office address: _____

- 1.10 Postal address: _____

- 1.11 Telephone No: _____
- 1.12 Website, if any: _____
- 1.13 Email address: _____
- 1.14 Is the company subject to regulation in a foreign country or financial services intermediary in a foreign country? _____
- 1.15 If yes, which jurisdiction? _____
- 1.16 Name of foreign regulator(s)? _____

SECTION 2: FINANCIAL RESOURCES

We hereby confirm that the applicant has, at minimum, paid-up share capital adequate for employment in the business and will maintain liquid resources that cover 13 weeks of annual expenditure at all times.

| | |
|-----------------------|------------------------------|
| | Paid-up share capital |
| Paid-up share capital | N\$ |

SECTION 3: AUDITOR

3.1 Full name of appointed auditor: _____

3.2 Company Registration No.: _____

3.3 Auditor's registration number with PAAB: _____

3.4 Tax Reference No.: _____

3.5 Contact person: _____

3.6 Postal address: _____

3.7 Physical address: _____

3.8 Telephone No.: _____

3.9 Email address: _____

3.10 Website, if any: _____

SECTION 4: DIRECTORS AND OTHER KEY PERSONS

<Provide details of each director and key person, using a separate sheet as attachment where applicable>

4.1 Full names of director/key person: _____

4.2 Identification/Passport No.: _____

4.3 Nationality: _____

4.4 Postal address: _____

4.5 Telephone No.: _____

4.6 Mobile No.: _____

4.7 Email address: _____

SECTION 5: SHAREHOLDER(S) OR OTHER OWNER(S) THAT CONTROLS THE APPLICANT

<Attach the full shareholder organigram.

Provide details of each shareholder or other owner who controls the applicant, using a separate sheet as attachment where applicable; if it is a company, provide contact person's details>

- 5.1 Full name/registered name of shareholder/owner: _____

- 5.2 Previous surname(s)/previously registered name(s): _____

- 5.3 Identification/Passport/Company registration No.: _____
- 5.4 Date of birth/ Date of incorporation: _____
- 5.5 Nationality/Country of incorporation: _____
- 5.6 Postal address: _____

- 5.7 Telephone No.: _____
- 5.8 Mobile No.: _____
- 5.9 Email address of shareholder or contact person: _____

- 5.10 Shareholding percentage: _____

If more than one such shareholder or owner, please complete and attach share certificate and indicate % held by each:

| Name | Individual | Company | Partnership | Joint Venture | Close Corporation | Other | % held by each |
|------|------------|---------|-------------|---------------|-------------------|-------|----------------|
| | | | | | | | |
| | | | | | | | |

SECTION 6: HOLDING COMPANY OF THE APPLICANT (IF APPLICABLE)

- 6.1 Full registered name: _____
- 6.2 Previously registered name(s): _____

- 6.3 Company registration No.: _____
- 6.4 Date of incorporation: _____
- 6.5 Country of incorporation: _____
- 6.6 Postal address: _____

- 6.7 Registered address: _____

- 6.8 Telephone No.: _____
- 6.9 Email address of contact person: _____
- 6.10 Shareholders: _____

If more than one holding company, please complete and attach share certificate and indicate % held by each:

| Name | Individual | Company | Partnership | Joint Venture | Close Corporation | Other | % held by each |
|------|------------|---------|-------------|---------------|-------------------|-------|----------------|
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

SECTION 7: CHIEF EXECUTIVE OFFICER

- 7.1 Full names: _____
- 7.2 Identification/Passport No.: _____
- 7.3 Nationality: _____
- 7.4 Postal address: _____

- 7.5 Telephone No.: _____
- 7.6 Mobile No.: _____
- 7.7 Email address: _____

SECTION 8: APPOINTED PRINCIPAL OFFICER

- 8.1 Full names: _____
- 8.2 Identification/Passport No.: _____
- 8.3 Nationality: _____
- 8.4 Physical address: _____

- 8.5 Postal address: _____

- 8.6 Telephone No.: _____
- 8.7 Mobile No.: _____
- 8.8 E-mail address: _____

SECTION 9: BANK DETAILS (operational account)*<Proof of bank account to be attached>*

9.1 Name of bank: _____

9.2 Branch name: _____

9.3 Account No.: _____

9.4 Branch code: _____

PART 2: OPERATIONAL ABILITY OF APPLICANT**BUSINESS PLAN**

The business plan of the applicant, that has been approved by the board of directors must at least deal with the following matters:

- (a) Provide an overview of the entity's business operations (company profile, clientele and post-trade offering, Investment Platform, Future Growth, etc.), Corporate Governance Framework, Risk Management Framework, Internal Control Framework, Business Continuity Plan, Systems for Portfolio Management, Agreements with Service Providers (internal and external), Information Technology Systems, Marketing Plan, Human Resources Plan, etc.;
- (b) An explanation of the management structure of the applicant including the names of the individuals responsible for the major functional areas and the number of personnel employed or to be employed in each functional area in the applicant;
- (c) The planned development of the information technology systems and infrastructure of the applicant and arrangements for their supply, management, maintenance, upgrading and security including details pertaining to the method or facility by means of which the business will be carried on;
- (d) The planned approach to qualifying, quantifying and managing risk within the applicant;
- (e) Security procedures to ensure the integrity of the systems for recording transactions and the maintenance of records, the capacity of these systems in relation to the budgeted number of transactions and the back-up resources available in the event of a systems failure; and
- (f) A report by the chairperson of the board of directors confirming that the applicant has adequate systems, procedures and policies in place to protect the information, data, records and documents relating to client accounts and the affairs clients against any unauthorized access, alteration, destruction or dissemination.

| PART 3 | | |
|--|------------|-----------|
| ADDITIONAL ATTACHMENTS | | |
| | YES | NO |
| Certified copies of the applicant's memorandum of association and articles; | | |
| Copy of applicant's written agreement with manager; | | |
| The applicant's business plan approved by the board of directors; | | |
| The organisational structure of the applicant; | | |
| If available, a copy of the applicant's audited annual financial statements as at its latest financial year-end; | | |
| Projected income statement, balance sheet and cash flow statement for at least a three-year period; | | |
| A schedule illustrating the funding provisions for anticipated supervisory responsibilities over the projected financial period referred to above; | | |
| A statement specifying the critical assumptions made in the preparation of budgets and the sources from which the applicant will derive its funding; | | |
| Where arrangements have been made for the funding of any temporary shortfall in available cash resources, a statement setting out the extent and terms of such commitment; | | |
| Certified copy of applicant's Income Tax Registration certificate and, if applicable, the VAT Registration certificate; | | |
| Proof, from a banking institution, of a bank account in the name of the applicant; | | |
| A certified copy of the appointment letter of the applicant's auditor; | | |
| Relevant completed parts and other information required pursuant to Standard No. GEN.S.10.2 – Fit and Proper Requirements; | | |
| Proof of payment of the required application fee in terms of Standard No. GEN.S.10.23 - Fees. | | |

SIGNATURE OF PRINCIPAL OFFICER OR DULY AUTHORISED PERSON

By signing the document, I confirm that all the information contained in this application is true and correct and can be relied upon and I have disclosed all necessary material information that may be required by NAMFISA.

Full Name: _____

Capacity: _____

Signature: _____

Date: _____

FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021**COLLECTIVE INVESTMENT SCHEMES****FOREIGN EXCHANGES, RATING AGENCY OVERSIGHT, AND DUE DILIGENCE
REQUIREMENTS FOR MANAGERS OF EXCHANGES AND SECURITIES****Standard No. CIS.S.4.22**

issued by NAMFISA under section 410(5)(m), read with sections 197 and 215 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) “credit rating” or “rating” means an assessment regarding the creditworthiness of an entity or obligation, expressed using an established and defined ranking system;
 - (c) “credit rating action” means to determine an initial credit rating, an upgrade of an existing credit rating, a downgrade of an existing credit rating, an affirmation of an existing credit rating, or a withdrawal of a credit rating;
 - (d) “credit rating agency” means an entity that is in the business of issuing credit ratings;
 - (e) “credit rating methodology” means the procedure by which a credit rating agency determines credit ratings, including the information that must be considered or analysed to determine a credit rating and the analytical framework used to determine the credit rating, including, as applicable, the models, financial metrics, assumptions, criteria, or other quantitative or qualitative factors to be used to determine the credit rating;
 - (f) “credit rating process” means all the steps taken with respect to a credit rating action including, but not limited to, the credit rating agency’s selection and assignment of analysts to work on the matter, application of the credit rating methodology, decision-making activities, interaction with the rated entity, obligor, originator, underwriter, or arranger, and as applicable, dissemination of the credit rating publicly or to subscribers;
 - (g) “due diligence” means the degree of prudence and necessary care that is reasonably expected from the manager in investigating, evaluating and assessing the details of an investment option, in order to establish -
 - (i) suitability;
 - (ii) risk;
 - (iii) potential value; and
 - (iv) reward,

before formally entering into a business contract to invest the assets of a portfolio in foreign securities;

- (h) “obligation” means a trading instrument, credit commitment, loan, or other similar product or transaction that has inherent credit risk; and
- (i) “obligor” means the entity that is legally or contractually obliged to make payments on a rated obligation.

(2) Words and phrases defined in the Act have the same meaning in this Standard, unless the context indicates otherwise, including without limitation, the following

- (a) “NAMFISA” as defined in section 1 of the Act;
- (b) “foreign exchange” as defined in section 78(1) of the Act;
- (c) as defined in section 168 of the Act –
 - (i) assets;
 - (ii) collective investment scheme;
 - (iii) investor;
 - (iv) manager; and
 - (v) portfolio;
- (d) “collective investment schemes in securities” as defined in section 195 of the Act.

Applicability

2. This Standard applies to a manager investing foreign securities in a portfolio of a collective investment scheme in securities, which foreign securities are traded on a foreign exchange approved by NAMFISA or are issued by a foreign entity.

Foreign exchanges approved by NAMFISA

3. Pursuant to section 197(1)(a) of the Act, NAMFISA approves the following foreign exchanges:

- (a) any exchange that is a member of the World Federation of Exchanges; and
- (b) any exchange that is a member of the African Securities Exchange Association.

Due diligence requirements

4. When considering inclusion of foreign equity or foreign non-equity securities in a portfolio in accordance with sections 197 and 215 of the Act, a manager must conduct a due diligence investigation in accordance with this clause 4.

(1) In respect of an exchange not approved by NAMFISA pursuant to clause 3 on which foreign equity and foreign non-equity securities are listed and traded:

- (a) **Liquidity and repatriation of funds** - In considering a foreign exchange, the following must be taken into account:
- (i) the overall liquidity of the exchange;
 - (ii) whether securities or derivatives can be bought and sold in a reasonable time, at best execution and in adequate amounts; and
 - (iii) the procedures and restrictions, if any, on the repatriation of funds to the Republic of Namibia;
- (b) **Regulation** -
- (i) The exchange must be subject to supervision by an authority, which must be a statutory body, an agency of a national government, state department of such government or another body designated for that purpose by one of said authorities; and
 - (ii) In addition, the following factors must be considered:
 - (aa) the degree to which members of the exchange are subject to formal supervision by the exchange or another body, and in particular whether compliance with capital adequacy requirements by members is supervised;
 - (bb) the involvement of a central securities depository and level of immobilisation or dematerialisation of scrip;
 - (cc) the existence of a form of contract guarantee, either a buying-in obligation by the exchange or other such arrangements to ensure that its members' transactions are settled;
 - (dd) the powers of the exchange or the supervising body to intervene in members' business in the event of misconduct and financial difficulties, including the power not to approve applications for membership, terminate membership and delist a security;
 - (ee) the initial listing standards and on-going supervision of securities traded on the exchange, including the publication of prospectuses and audited annual financial statements;
 - (ff) the everyday availability of current information about securities, derivatives, quotations, transactions, prices and spreads;
 - (gg) requirements for the issue of contract notes or their equivalents;
 - (hh) whether there is a requirement for trade reporting of the securities or derivatives or both to the exchange or other supervisory body;
 - (ii) whether the clearing and settlement arrangements normally used for transactions on the exchange are prompt and secure;
 - (jj) the risk of loss in the event of insolvency of a member of the exchange;

- (kk) the manner in which the exchange investigates and deals with complaints; and
 - (ll) whether any type of guarantee fund is maintained to protect investors in respect of liabilities arising prior to the default of a member or a fidelity insurance policy exists as a front-line protection for member firms particularly in so far as employee fidelity is concerned;
- (c) **Regular operation -**
- (i) The exchange must have regular trading hours during which the listed foreign equity and non-equity securities may be traded; and
 - (ii) The following additional considerations must be taken into account:
 - (aa) the availability and timing of price and volume information and the manner in which it is distributed; and
 - (bb) in respect of listed foreign equity and non-equity securities the degree to which, and the speed at which, companies with listed foreign non-equity securities on the exchange must release price sensitive information, and the medium through which that information is distributed;
- (d) **Recognised exchange -** The exchange must be recognised or registered as a market or exchange or self-regulatory organisation by an authority which must be a statutory body, an agency of a national government, a state department of such government or another body designated for that purpose by one of the said authorities; and
- (e) **Open to the public -** Investments listed or admitted to dealing on the exchange must be freely available for trading by the public directly, or through members of the exchange, during normal trading hours. The extent to which overseas investors are permitted to hold securities listed and traded on the exchange must be considered.
- (2) In respect of foreign non-equity securities which are not listed on an exchange:
- (a) **Liquidity and repatriation of funds -** The following must be considered:
- (i) overall liquidity in respect of unlisted foreign non-equity securities;
 - (ii) whether the unlisted foreign non-equity securities can be bought and sold in a reasonable time, at best execution and in adequate amounts; and
 - (iii) the procedures and restrictions, if any, on the repatriation of funds to the Republic of Namibia;
- (b) **Nature of the foreign non-equity securities -** The manager must consider the relative or inherent risk levels of one security type compared to another and the appropriateness for its inclusion in a portfolio, for example, secured debt measured against non-secured debt, or government guaranteed debt measured against debt not guaranteed by a government;

- (c) **Credit risk profile** –
- (i) The manager must consider the likelihood or risk of loss of principal amounts or loss of a financial reward, stemming from an issuer's failure to repay a loan or otherwise meet a contractual obligation and the appropriateness for inclusion in a portfolio, for example, measuring risk against reward considerations, and the credit worthiness of an issuer; and
 - (ii) Accounting standards used by issuers to prepare financial statements should be of a high and internationally acceptable quality;
- (d) **Maturity profile** - The manager must consider the maturity profile of an issuer to assess the issuer's ability to borrow and its liquidity position. Consequently, the manager must consider the appropriateness of the inclusion of the particular foreign non-equity security of the issuer in a portfolio;
- (e) **Duration profile** - The manager must consider the sensitivity of the price (the value of principal amounts) of foreign non-equity securities to a change in interest rates. Consequently, the manager must determine the appropriateness of the inclusion of the particular foreign non-equity security in a portfolio;
- (f) **Currency risk profile** - The manager must consider the risk that arises from the change in price of one foreign currency against the Namibia Dollar and other major currencies. Consequently, the manager must determine the appropriateness of the inclusion of the particular foreign non-equity security denominated in a specific foreign currency in a portfolio; and
- (g) **Macro and micro economic factors** –
- (i) Domestic political situation - The manager must reasonably consider all factors that contribute to a stable political environment that would be conducive to a stable investment environment;
 - (ii) Economic growth prospects - The manager must consider the economic growth prospects of a foreign country in order to assess the merits and prospects of investing in foreign non-equity securities issued by entities in a particular foreign country;
 - (iii) Monetary and fiscal policies - The manager must consider the monetary and fiscal policies of foreign country in order to assess whether it would be, and is likely to remain conducive to supporting a stable environment for investment; and
 - (iv) Open to foreign investors - The extent to which foreign investors are permitted to hold foreign non - equity securities must be considered.
- (3) Where credit rating agencies, credit ratings and other third parties are used, the manager must –
- (a) ensure that credit ratings may form one element, among others, of the due diligence process but do not constitute the sole factor supporting the credit analysis on an instrument;
 - (b) ensure that the credit rating agency has established, maintains, documents, and

- enforces a credit rating methodology for each class of entity or obligation for which the credit rating agency issues credit ratings. Each credit rating methodology should be rigorous, capable of being applied consistently, and, where possible, result in credit ratings that can be subjected to some form of objective validation based on historical experience;
- (c) understand the methodologies, parameters and the basis on which the assessment of a credit rating agency was produced, and have adequate means and expertise to identify the limitations of the methodology and assumptions used to form that assessment;
 - (d) ensure that the credit rating agency has adopted reasonable measures designed to ensure that it has the appropriate knowledge and expertise, and that the information it uses in determining credit ratings is of sufficient quality and obtained from reliable sources to support a high quality credit rating. The manager must also have adequate means and expertise to challenge the methodology, parameters and the basis on which the assessment of a credit rating agency was produced;
 - (e) ensure that the credit rating agency has established, maintains, documents, and enforces policies, procedures, and controls designed to avoid issuing credit ratings, analyses, or reports that contain misrepresentations or are otherwise misleading as to the general creditworthiness of a rated entity or obligation;
 - (f) ensure that the credit rating agency has established, maintains, documents, and enforces policies, procedures, and controls to identify and eliminate, or manage and disclose, as appropriate, any actual or potential conflicts of interest that may influence the credit rating methodologies, credit rating actions, or analyses of the credit rating agency or the judgment and analyses of its employees;
 - (g) review with the client, its disclosures describing alternative sources of credit information in addition to external credit ratings and make available to investors, as appropriate, a brief summary description of their internal credit assessment process, including how external credit ratings may be used to complement or as part of the manager's own due diligence internal credit assessment methods;
 - (h) ensure that a downgrade credit rating does not automatically trigger the immediate sale of investment assets. Should the manager decide to divest, the transaction must be conducted within a timeframe that is in the best interests of the investors; and
 - (i) ensure, when relying on a third party for the performance of operational functions which are critical for the provision of continuous and satisfactory services to clients and the performance of activities on a continuous and satisfactory basis, that it takes reasonable steps to avoid undue additional operational risk.
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