

GOVERNMENT NOTICE

COLLECTIVE INVESTMENT SCHEMES

NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY

No. X

2017

STANDARDS MADE UNDER THE FINANCIAL INSTITUTIONS AND MARKETS ACT, 2017

The Namibia Financial Institutions Supervisory Authority has under sections 166(b), 382(5)(b), and 382(5)(bb) of the Financial Institutions and Markets Act, 2017 (Act No. X of 2017), made the Standards set out in the Schedule.

Estelle Tjipuka
Chairperson

Windhoek,

2017

FINANCIAL INSTITUTIONS AND MARKETS ACT, 2017 [Act No. • of 2017]

DRAFT STANDARD

ADDITIONAL INFORMATION REQUIRED TO ENABLE AN INVESTOR TO MAKE AN
INFORMED DECISION PURSUANT TO SUBSECTION 166(b) OF THE ACT

NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY

Standard No: CIS.S.4.1

FINANCIAL INSTITUTIONS AND MARKETS ACT, 2017 [Act No. • of 2017]

Additional information required to enable an investor to make an informed decision pursuant to subsection 166(b) of the Act

Standard No. CIS.S.4.1

issued by NAMFISA under section 166(b), 382(5)(b), and 382(5)(bb) of the Financial Institutions and Markets Act, 2017

Definitions

1. (1) In this Standard—

“Act” means the *Financial Institutions and Markets Act, 2017* [Act No. • of 2017], and includes the regulations prescribed under the Act and the standards and other subordinate measures issued by NAMFISA under the Act;

“base currency” means the currency in which the assets are denominated;

“CIS” means a collective investment scheme as defined in section 162 of the Act;

“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;

“constant NAV” means NAV per participatory interest that does not vary with changes in the assets and liabilities of a collective investment scheme

“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;

“fiduciary” has the same meaning as in the General Standards;

“fiduciary duty” has the same meaning as in the General Standards;

“functionary” means a principal officer, officers or employees of a manager or an individual acting for or representing an authorised representative that is a corporate body, including a director, principal officer or other officers of that corporate body;

“initial charge” means the costs incurred by the manager in the creation and issuance of a participatory interest and included in the price of the participatory interest;

“material information” has the same meaning as in the General Standards;

“NAV” means the “net asset value” of a participatory interest as determined in accordance with Standard CIS 5-11;

“offer” means to sell or offer to sell for cash any participatory interest to a client or a potential client;

“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;

“open-end CIS” means a CIS that issues and redeems participatory interests on an ongoing basis, changes its underlying assets from time to time and the NAV price of which is based on the value of assets;

“operator” means the operator of a foreign CIS;

“Rand” means the official currency of the Republic of South Africa;

“representative” means a representative appointed by a trustee or custodian of a CIS pursuant to subsection 209(6) of the Act;

“transaction” has the meaning ascribed thereto by section 75 of the Act, insofar as it is applicable in the context of these standards, and refers to a contract of sale and purchase of a participatory interest;

“underlying securities” means the assets of a portfolio;

“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; and

“variable NAV” means NAV per participatory interest that varies with changes in the assets and liabilities of a 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) affiliate;
 - (ii) associate;
 - (iii) auditor;
 - (iv) board;
 - (v) client;
 - (vi) corporate body;
 - (vii) director;
 - (viii) financial service;
 - (ix) financial year;
 - (x) NAMFISA;
 - (xi) officer;
 - (xii) principle office;
 - (xiii) principal officer; and
 - (xiv) person
- (b) control as defined in section 3 of the Act
- (c) as defined in section 75 of the Act —
- (i) exchange;
 - (ii) issuer;
 - (iii) investment manager;
 - (iv) listed securities;
 - (v) regulated person;
 - (vi) security; and
 - (vii) transaction.
- (d) as defined in section 162 of the Act —
- (i) assets;
 - (ii) authorised representative;
 - (iii) collective investment scheme;
 - (iv) custodian;
 - (v) deed;
 - (vi) designated representative;
 - (vii) investor;
 - (viii) manager;
 - (ix) members of the public;
 - (x) participatory interest;

- (xi) portfolio; and
 - (xii) trustee;
- (e) collective investment scheme in participation bonds, as defined in section 188 of the Act;
 - (f) collective investment scheme in unlisted securities, as defined in section 197 of the Act;
 - (g) collective investment scheme in money market instruments, as defined in section 202 of the Act;
 - (h) foreign collective investment scheme, as defined in section 205 of the Act; and
 - (i) a person or manager connected with a foreign country or Namibia, as the case may be, as provided in section 207(2) of the Act.

Applicability

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

General information

- 3. (1) A manager, authorized 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 166(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, authorized 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, authorized 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 166(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 sector allocation of assets, including individual securities constituting 60% of assets, and details of portfolios in feeder-fund or fund-of-fund arrangements;
 - (e) tax status of investments and investment income;
 - (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 1, 5 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 material changes;
 - (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 clauses 3 and 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 the General Standards;
 - (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 at least 14 days before entering into an initial transaction with an investor.
- (5) The transaction contemplated in this section 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, authorized 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. (1) An investor may request other information that may be useful to the investor from a manager, an authorized representative or a designated representative or operator, including:
- (a) an Internet or Web site 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 authorized representative's authorization 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
- (2)
with another named person.