

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 173(4) and 382(5)(c) 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

OTHER INFORMATION AND MATERIAL REQUIRED FOR AN AUTHORISED
REPRESENTATIVE

NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY

Standard No: CIS.S.4.2

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

Other information and material required for an authorized representative

Standard No. CIS.S.4.2

issued by NAMFISA under sections 173(4) and 382(5)(c) 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 a manager or an operator of a collective investment scheme.

Requirements in respect of individual authorized representative

- 3. (1) Where the authorized representative is an individual, a manager or operator must provide the following information and material in respect of the individual:
 - (a) personal details of the individual;
 - (b) educational and practical experience of the individual in financial services or related fields;
 - (c) any beneficial interest the individual or the individual's associates have in a financial institution, including an interest in the manager, operator or a trustee or custodian in relation to the CIS;
 - (d) any final civil or criminal penalty that may have been imposed on the individual in the last five years; and
 - (e) any incidence of the individual having been found guilty of dishonesty, unprofessional conduct, or breach of fiduciary duty in a similar capacity as authorized representative in the last five years. a list of members of the board of the self-regulatory organisation and any changes thereto over the last financial year.

Requirements in respect of a corporate body authorized representative

4. (1) Where the authorized representative is a corporate body, a manager must provide the following information and material in respect of the corporate body:
 - (a) personal details of the shareholders, controlling persons, directors, principal officer, and officers of the authorized representative;
 - (b) registered address of the principal office;
 - (c) memorandum and articles or other founding documents of the corporate body;
 - (d) registration documents of the corporate body;
 - (e) name and address of the auditor, if any;
 - (f) names of the individuals acting for and on behalf of the corporate body in relation to investors;
 - (g) statement of the relationship between the manager or operator and the authorized representative or its functionaries;
 - (h) any beneficial interest a functionary or the functionary's associates have in a financial institution, including in the manager, operator or a trustee or custodian in relation to the CIS, or the authorized representative has in the manager, operator or a trustee or custodian in relation to the CIS;
 - (i) any final civil or criminal penalty that may have been imposed on any functionary of the authorized representative in the last five years; and
 - (j) any incidence of a functionary having been found guilty of dishonesty, unprofessional conduct, or breach of fiduciary duty in a similar capacity as in relation to an authorized representative in the last five years.in which the manager or operator ensures the fair treatment of investors

General requirement

5. (1) A manager or operator must implement policies and procedures that are designed to ensure that the manager or operator is able to obtain the information and material specified under this standard, and to provide such information and material to NAMFISA timeously.