

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 section 382(5)(g) 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

DRAFT STANDARD

RULES FOR ADMINISTRATION OF COLLECTIVE INVESTMENT SCHEMES UNDER
ONE OR MORE OF PARTS III TO VIII OF CHAPTER 4 AND SOLICITATION OF
INVESTMENTS IN A FOREIGN COLLECTIVE INVESTMENT SCHEME UNDER PART IX
OF CHAPTER 4

NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY

Standard No: CIS.S.4.3

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

Other information and material required for an authorized representative

Standard No. CIS.S.4.3

issued by NAMFISA under section 382(5)(g) 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 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 would enable the manager to satisfy the duties set out in section 164 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.s
- (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. (1) In the solicitation of investments from investors in Namibia, an operator of a foreign CIS must ensure that:
 - (a) the solicitation of investments from potential investors is in accordance with the Act;
 - (b) the operator complies with the Act and other applicable laws;
 - (c) the interests of investors are protected;
 - (d) the operator is transparent and discloses material information to investors timeously;
 - (e) the governance and audit arrangements are suited to the interests of investors; and
 - (f) the administration of the CIS is in the best interests of investors

General

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

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