

GOVERNMENT NOTICE

FINANCIAL MARKETS

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 86 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,

2016

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

DRAFT STANDARD

MATTERS TO BE INCLUDED BY A REGISTERED EXCHANGE IN ITS LISTING
REQUIREMENTS

NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY

Standard No: FM.S.3.1

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

Matters to be included by a registered exchange in its listing requirements

Standard No. FM.S.3.1

issued by NAMFISA under section 86 of the Financial Institutions and Markets Act, 2017

Definitions

1. (1) In this Standard—
 - (a) “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;
 - (b) “Companies Act” means the Companies Act, 2004 (Act No. 28 of 2004);
 - (c) “CSD” means a central securities depository as defined in the Act;
 - (d) “equity securities” means shares as defined in section 1 of the Companies Act;
 - (e) “material” means any factual information about an issuer or securities issued which is likely or reasonably expected to influence and investor’s decision
 - (f) “non-equity security” means securities that are not equity securities;
 - (g) “offer” means to sell or offer to sell any security to a client or potential client for valuable considerations;
 - (h) “offer document” means a document containing information about an issuer or offer f securities whether referred to as a prospectus, a term sheet, notice, circular or by any other name and whether in printed or in electronic form, and includes the particulars specified in subsection 109(6) of the Companies Act;
 - (i) “prospectus” means a prospectus within the meaning of section 1 of the Companies Act; and
 - (j) “transaction” has the meaning ascribed thereto by section 75 of the Act, but for the purposes of this Standard also includes any other transfer, e.g., by way of a gift, testamentary disposition, cession, or pledge, of listed securities outside the registered exchange on which such securities are listed

- (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) board;
 - (iv) client;
 - (v) director;
 - (vi) financial year;
 - (vii) foreign entity;
 - (viii) Generally Accepted Accounting Practice;
 - (ix) International Accounting Standards;
 - (x) NAMFISA;
 - (xi) officer; and
 - (xii) person
- (b) control as defined in section 3 of the Act
- (c) As defined in section 75 of the Act —
- (i) central securities depository;
 - (ii) exchange;
 - (iii) foreign exchange;
 - (iv) issuer;
 - (v) listed security;
 - (vi) regulated person;
 - (vii) security; and
 - (viii) transaction.

Applicability

2. This Standard applies to every registered exchange, and includes an exchange referred to in section 86 of the Act.

Listing requirements

3. (1) The listing requirements issued by a registered exchange pursuant to subsection 101(1) of the Act must, in addition to the requirements thereunder, set out the following pursuant to subsection 101(1)(h):

- (a) the form and manner in which a prospective issuer may apply for a listing of any security eligible to be listed or quoted on the exchange, including a prospectus or other offer document;
 - (b) the listing fees and charges appropriate to the securities sought to be listed or quoted provided that the fees and charges are not prohibitive or serve as unnecessary barrier to potential issuers;
 - (c) the founding documents and any supplementary documentation of the prospective issuer required to be submitted together with a prospectus, including shareholder or board resolutions authorizing the listing or quoting of securities on an exchange;
 - (d) the provision of the last audited financial statements of the issuer or group if the issuer is part of a group of companies;
 - (e) any reasonable requirements of the board of directors and executive management of the prospective issuer, including their fitness and propriety;
 - (f) that the managing director or chief executive officer of the prospective issuer may not be the chairman of the board of the issuer;
 - (g) that the prospective issuer may be required to have, at minimum, an audit committee and a remuneration committee of the board, and such further committees the exchange may deem necessary having regard to the size of the issuer and the complexity of its business;
 - (h) the name and address of every insider who, directly and indirectly, beneficially own 5% or more of any class of securities of the issuer; and
 - (i) that the prospective issuer may not publish the prospectus without the prior approval of the exchange.
- (2) A registered exchange must provide in the listing requirements for cooperation with any foreign exchange on which securities listed or quoted on the exchange are listed or quoted or the regulatory authority with oversight of such foreign exchange and for reciprocal action where the foreign exchange has taken action against the foreign issuer. The listing requirements must set out the disclosure requirements or

continuing obligations of issuers and provide for the adequate protection of sensitive issuer information.

- (3) A registered exchange must provide in the listing requirements for cooperation with any foreign exchange on which securities listed or quoted on the exchange are listed or quoted or the regulatory authority with oversight of such foreign exchange and for reciprocal action where the foreign exchange has taken action against the foreign issuer
- (4) The listing requirements must not set out matters that unduly prevent potential issuers from entering the exchange or from exiting the exchange, and must not be designed to allow entrance by issuers to the exchange which may pose undue risks to clients or entrance where it is not in the public interest.
- (5) The listing requirements must be designed to further the objects of the Act as provided in section 76, without prejudice to the objects of the exchange or of the issuer.
- (6) The prospective issuer must disclose to the exchange details concerning.
 - (a) any legal or arbitration proceedings that have taken place in the previous 12 months and any that are pending or threatened, that might have a material effect on the financial position of the issuer or its affiliates or associates;
 - (b) any material contracts entered or to be entered into by the issuer;
 - (c) any person who controls the issuer within the meaning of the Act; and
 - (d) the group, if the issuer is a member of a group.
- (7) The listing requirements must provide that issuers may not submit or publish documents or information that is misleading, deceptive or false in a material respect and must provide for penalties or remedial action for such conduct, including barring a prospective issuer from listing or quoting securities on the exchange.