

GOVERNMENT NOTICE

FINANCIAL MARKETS

NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY

No. X

2018

STANDARDS MADE UNDER THE FINANCIAL INSTITUTIONS AND MARKETS ACT, 2018

The Namibia Financial Institutions Supervisory Authority has under subsection 410(4)(s) of the Financial Institutions and Markets Act, 2018 (Act No. X of 2018), made the Standards set out in the Schedule.

Estelle Tjipuka
Chairperson

Windhoek,

2018

FINANCIAL INSTITUTIONS AND MARKETS ACT, 2018 [Act No. • of 2018]

DRAFT STANDARD

THE LIMITS FOR THE PURPOSES OF AN AFFECTED TRANSACTION AS DEFINED IN
SECTION 155 OF THE ACT AND DISCLOSURE OF AFFECTED TRANSACTIONS

NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY

Standard No: FM.S.3.8

FINANCIAL INSTITUTIONS AND MARKETS ACT, 2018 [Act No. • of 2018]

**The limits for the purposes of an affected transaction as defined in section 155 of
the act and disclosure of affected transactions**

Standard No. FM.S.3.8

*issued by NAMFISA under subsection 410(4)(r) of the Financial Institutions and Markets Act,
2018*

Definitions

1. (1) In this Standard—
 - (a) “Act” means the *Financial Institutions and Markets Act, 2018* [Act No. • of 2018], 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 78 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 78 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 listed securities and securities intended to be listed on a regulated market that:
 - (a) have voting rights attached, which vest the right to vote; or

(b) are convertible to a security with attributes referred to in sub-clause (a).

Limits for the purpose of paragraph (b) of the definition of “affected transaction”:

3. Any transaction in which a person, in whom control of a corporate body is vested, acquires further securities of that corporate body, whether acting alone or conjointly or in concert within the meaning of clause 3, in excess of:
 - 1) Without prejudice to any requirement under the Companies Act, the regulated person concerned must provide the following information about an issuer:
 - (a) 5% of any class of voting securities; or
 - (b) 5% of any class of non-voting securities that are convertible into voting securities;is an affected transaction for the purposes of subsection 155(b) of the definition of “affected transaction.”

Acting conjointly or in concert

4. (1) For the purposes of paragraphs (a) and (b) of the definition of “affected transaction” under section 155 of the Act, two or more persons who, with respect to a corporate body, have entered into any transaction, whether formal or informal, verbal or written, in respect of:
 - (a) securities of that corporate body, or
 - (b) securities of an affiliate or associate of that corporate body, are deemed to be acting conjointly or in concert.
- (2) Without limiting the generality of sub-clause (1), any agreement, commitment or understanding by or between two or more persons who beneficially own securities of a corporate body or securities of any entity referred to in sub-clause (1)(b) or (c):
 - (a) whereby any of them or their nominees may veto any proposal put before the board of directors of that corporate body; or
 - (b) under which no proposal put before the board of directors of that corporate body may be approved except with the consent of any of them or their nominees,

is deemed to be a transaction referred to in sub-clause (1).

(3) For the purposes of this clause, persons shall be presumed not to have agreed to act conjointly or in concert solely by reason of the fact that:

- (a) a person exercises voting rights by proxy or in a nominee or fiduciary capacity for and on behalf of one or more other persons in respect of securities referred to in sub-clause (1); or
- (b) they exercise the voting rights attached to securities referred to in sub-clause (1) in the same manner.

(4) Where, in the opinion of NAMFISA, it is reasonable to conclude that a transaction referred to in sub-clause (1) or (2) exists by or among two or more persons, NAMFISA may designate those persons as persons who have agreed to act conjointly or in concert.

Affected transactions prohibited without disclosure

- 5. (1) A person must not enter into any affected transaction without first giving notice of the transaction, in writing, to NAMFISA and the regulated market concerned and must, after entering into the affected transaction, forthwith give notice to the public by means of a press release in at least two daily newspapers circulating in Namibia.
- (2) The notice and the press release referred to in sub-clause (1) must be authorized by a senior officer of the corporate body concerned, contain the information set out in Annexure 1, and be accessible to the public.

Further disclosure

- 6. In the event that disclosure has been made by a person pursuant to clause 4 in respect of an affected transaction, and the person intends to enter into an additional affected transaction, that person must not enter into the additional transaction unless and until additional disclosure is made to NAMFISA and the regulated market in accordance with clause 4

Exceptions

- 7. (1) This Standard does not apply to a transaction that is:

- (a) a merger or amalgamation of two or more corporate bodies;
- (b) a transfer of all or substantially all of the business or assets of a corporate body;
- (c) a scheme which has been voted for or will be voted for at a meeting of the security holders concerned of a corporate body;
- (d) the result of a corporate body being placed under judicial management; or
- (e) undertaken by a corporate body owned by the State.

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Annexure 1

Information to be provided to NAMFISA and the regulated market concerned, and to be contained in a press release, as provided in clauses 4, 5 and 6 of this Standard.

1. For each class of securities involved in a transaction giving rise to an obligation to give notice to NAMFISA and the regulated market concerned and to the public by way of a press release pursuant to clause 4 or 6 of the Standard, and if applicable, for each class of voting securities into which the securities of the class are convertible, exercisable or exchangeable, the notice must include:

- (a) the name and address of the person who is or will be the acquirer;
- (b) the designation and number of securities and the percentage in the class of securities which the person acquired or will acquire;
- (c) the designation and number of securities and the total percentage in the class of securities which the person holds or will hold immediately after the transaction;
- (d) the designation and number of securities and the total percentage in the class of securities over which:
 - (i) the person who is the acquirer, either alone, or together with any associates or other persons acting jointly or in concert, has control;
 - (ii) the person who is the acquirer, either alone or together with any associates or other persons acting jointly or in concert, has control but does not have ownership;
- (e) the value, in Namibian dollars, of any consideration offered per security, if the person acquired ownership of a security;
- (f) the purpose of the person who is or will be the acquirer and any associates or other persons acting jointly or in concert in effecting the transaction;
- (g) the general nature and material terms of any agreement with respect to the securities of the corporate body, other than lending arrangements, entered into among the corporate body or any other entity and the person who is the acquirer and any associates or other persons acting jointly or in concert with the acquirer, including any agreements with respect to the acquisition, holding, disposition or voting of any of the securities;

- (h) the names and addresses of any associates or other persons acting conjointly or in concert with the person who is the acquirer with respect to the transaction; and
- (i) any previously undisclosed inside information known by a person who is an insider.

2. The notice in the press may include:

- (a) other relevant information in addition to that required by this Annexure; or
- (b) a declaration that the issue of the press release is not an admission that a person named in the press release owns or controls any described securities or is an associate or acting conjointly or in concert with another named person.

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