

GOVERNMENT NOTICE

FINANCIAL MARKETS

NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY

No. X

2021

STANDARDS MADE UNDER THE FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021

The Namibia Financial Institutions Supervisory Authority has under section 237 and 410(5)(y) of the Financial Institutions and Markets Act, 2021 (Act No. X of 2021), made the Standards set out in the Schedule.

Gersom Katjimune
Chairperson

Windhoek,

2021

DRAFT STANDARD

MATTERS TO BE REGULATED BY DEED

NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY

Standard No: CIS.S.4.12

FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021 [Act No. • of 2021]

Matters to be regulated by deed

Standard No. CIS.S.4.12

issued by NAMFISA under section 237 and 410(5)(y) of the *Financial Institutions and Markets Act, 2021*

Definitions

1. (1) In this Standard—
 - (a) “Act” means the *Financial Institutions and Markets Act, 2021* [Act No. • of 2021], 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 managers, trustees, custodians and any other person designated by NAMFISA by notice in the *Gazette*.

Matters to be provided in deed

3. (1) A deed of a collective investment scheme, in general, must:
 - (a) comply with the requirements of the Act and contain provisions in respect of the matters set out in Annexure XX;
 - (b) provide for the trustee or custodian to hold assets of a portfolio in trust for the investors; and
 - (c) set out risk management measures, including the identification, evaluation, measurement, management, and mitigation measures.
- (2) A deed of a collective investment scheme other than in property, must provide for the requirements applicable to the administration of a collective investment scheme and must, at a minimum, contain provisions in respect of the matters set out in Annexure XXX.
- (3) A deed of a collective investment scheme in property, must provide for the requirements applicable to the administration of a collective investment scheme in property, and must, at a minimum, contain provisions in respect of the matters set out in Annexure XXXX.
- (4) NAMFISA may by notice in the *Gazette* exempt a particular type or category of collective investment scheme or a portfolio from the provisions of Annexure XX or Annexure XXX and determine the matters to be complied with or to be provided for in a deed by such type or category of collective investment scheme or portfolio

Appendix X

GENERAL MATTERS WHICH MUST BE PROVIDED FOR IN DEED OF COLLECTIVE INVESTMENT SCHEME

General

1. A deed must in general provide for the:
 - (a) constitution of the scheme;
 - (b) name of collective investment scheme and every portfolio;
 - (c) form of collective investment scheme, including whether open-ended or closed-ended;
 - (d) objectives of collective investment scheme or portfolio;
 - (e) type of scheme as defined in Parts 3, 4, 5, 6, 7, 8 and 9 of Chapter 4 of the Act;
 - (f) date on which the agreement is entered into;
 - (g) name of manager and trustee or custodian;
 - (h) definitions of terms used in the deed;
 - (i) binding nature of deed on manager, trustee or custodian and investors;
 - (j) availability of deed for inspection by investors during office hours;
 - (k) financial year and year-end of scheme and portfolios;
 - (l) annual financial statements and statements to investors;
 - (m) keeping of an investor register; and
 - (n) statement of rights and obligations of investors, manager, trustee or custodian

Administration

2. A deed must provide for the following in respect of the administration of a collective investment scheme:
 - (a) terms and conditions and termination of appointment of trustee or custodian and investment manager;
 - (b) the manner in which participatory interests may be sold or transferred;
 - (c) the manner of creating additional participatory interests, where applicable;
 - (d) the determination of yields on participatory interests;
 - (e) charges and fees and the determination of such charges and fees;
 - (f) when and how the charges and fees may be levied;
 - (g) the manner of cancelling participatory interests;
 - (h) remuneration of trustee or custodian;

- (i) base currency of scheme;
- (j) the manner of obtaining investor consent;
- (k) notices to investors in respect of changes to portfolio;
- (l) the exercise of voting rights in securities held, and proxy voting and handling of conflicts of interests;
- (m) the valuation of participatory interests, including methods or descriptions;
- (n) the provision of statements and frequency of statements to investors, indicating invested funds;
- (o) the manner in which income and accruals are accounted for and received;
- (p) the manner and timing of distributing income that is distributable; and
- (q) the manner of dealing with participatory interests upon death, insolvency, or disability of investors.

Powers of manager

3. A deed must set out the powers of the manager, including but not limited to:
 - (a) formulating a prudent investment policy;
 - (b) investment of scheme assets in accordance with the investment policy;
 - (c) doing all such things and entering into any arrangement as necessary for the administration of the scheme and to achieve the investment objectives of a portfolio;
 - (d) obtaining and acting on advice or information obtained from professional advisers and others considered by it to be experts;
 - (e) ensuring that participatory interests in the scheme are valued and priced in accordance with the deed and the Act;
 - (f) appointing an investment manager, an agent, authorised representative or designated representative to exercise powers and perform duties on its behalf;
 - (g) provision for voting rights on assets and indemnity by the manager and approval by trustee or custodian; and
 - (h) additional duties of the trustee or custodian which are consistent with those prescribed in the Act.

Assets of scheme or portfolio

4. A deed must prescribe the following in respect of underlying assets:
 - (a) the trustee shall, subject to the terms of the deed, hold the underlying securities in the collective investment scheme for the investor;
 - (b) any moneys for investment accruing from the issue of participatory interests, dividends, interest or any other income accruing on underlying securities, the proceeds of capital gains, rights or bonus issues and any moneys received by the

- manager from the realization of underlying securities, shall be handed to the trustee in cash or deposited in a trust account or accounts controlled by the trustee;
- (c) the proceeds of capital gains, rights and bonus issues shall be invested in the collective investment scheme concerned for the benefit of the investor;
 - (d) it shall be incumbent upon the manager managing such scheme to repurchase, subject to such terms and conditions as may in terms of the deed apply, any number of participatory interests offered to it, on the basis of prices calculated not more than 24 hours previously or (if during the preceding 24 hours the exchange was closed) on such basis as may be prescribed in the trust deed; and
 - (e) any other information that NAMFISA deems necessary

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Annexure XXX

MATTERS WHICH MUST BE PROVIDED FOR IN DEED OF COLLECTIVE INVESTMENT SCHEME OTHER THAN PROPERTY

1. A deed must provide for the following matters:
 - (a) the investment policy in respect of each portfolio;
 - (b) the manner in which the assets of a portfolio are to be valued for the purposes of determining the selling and repurchase prices of participatory interests;
 - (c) the frequency of determining the selling and repurchase prices of participatory interests, and the specific time at which such determination will be made on a daily basis, which time will be referred to as the valuation time;
 - (d) the basis on which the market value of assets not listed on an exchange would be determined for the purposes of determining the selling and repurchase prices of participatory interests;
 - (e) the manner in which and the time at which the valuation time will be applied to the creation, sale, repurchase or cancellation of participatory interests;
 - (f) the manner in which distributions to investors are to be calculated and settled;
 - (g) the limits, terms and conditions under which scrip may be borrowed or lent;
 - (h) the limits, terms and conditions on which a manager may borrow money for the account of a portfolio;
 - (i) the charges that may be levied and the method of calculation of those charges;
 - (j) written notice of not less than three months to every investor of an increase in any charge and of any change in the method of calculation which could result in an increase or the introduction of any additional charge; and
 - (k) the manner in which a deed may be amended.

2. A deed must provide for the following in respect of repurchase of participatory interests:
 - (a) compulsory repurchase of any number of participatory interests offered to the collective investment scheme or a portfolio;
 - (b) for the purposes of sub-paragraph 0 and subject to sub-paragraph (d), the manager must determine a cut-off time by when repurchase requests must be received for the purpose determining which valuation time will be used for calculating the prices;
 - (c) the time determined in terms of sub-paragraph (b) may not be changed except upon 30 day's written notice to the investors;
 - (d) when a manager receives a request for the repurchase of participatory interests in circumstances which warrant suspension of the repurchase, the manager:
 - (i) may, with the prior consent of the trustee or custodian; or

(ii) must, when the trustee or custodian so requires,

suspend the repurchase of the participatory interests, if the manager, trustee or custodian is of the opinion that the circumstances warrant the suspension;
and

(e) the repurchase of such participatory interests must be settled in accordance with the conditions determined by the NAMFISA.

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Annexure XXXX

MATTERS WHICH MUST BE PROVIDED FOR IN DEED OF COLLECTIVE INVESTMENT SCHEME IN PROPERTY

1. A deed must provide for the requirements applicable to the administration by a manager of a collective investment scheme in property and must, amongst others and as far as applicable, contain provisions regarding the following matters –

- (a) the investment policy in respect of each portfolio;
- (b) the frequency and basis on which the assets of a portfolio are to be valued;
- (c) the manner in which participatory interests are to be created or cancelled;
- (d) the manner in which distributions are to be calculated and settled;
- (e) the limits, terms and conditions under which a manager may for the account of a portfolio borrow money;
- (f) the charges that may be levied and the method of calculation of those charges;
- (g) written notice to every investor of an increase in any charge and of any change in the method of calculation which could result in an increase or the introduction of any additional charge, being not less than three months; and
- (h) the manner in which a deed may be amended.