

**GOVERNMENT NOTICE**

**COLLECTIVE INVESTMENT SCHEMES**

**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 410(5)(r) 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

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ACTIONS THAT MAY BE TAKEN BY NAMFISA AGAINST A MANAGER OR PERSON  
CONNECTED WITH A FOREIGN COUNTRY PURSUANT TO SECTION 220(1)

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NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY

**Standard No: CIS.S.4.6**

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

**Other information and material required for an authorized representative**

**Standard No. CIS.S.4.6**

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

**Definitions**

1. (1) In this Standard—

“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;

“base currency” means the currency in which the assets are denominated;

“CIS” means a collective investment scheme as defined in section 168 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 authorized 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 189(6) of the Act;

“transaction” has the meaning ascribed thereto by section 78 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 78 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 168 of the Act —
- (i) assets;
  - (ii) authorized 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 210 of the Act;
  - (f) collective investment scheme in unlisted securities, as defined in section 210 of the Act;
  - (g) collective investment scheme in money market instruments, as defined in section 213 of the Act;
  - (h) foreign collective investment scheme, as defined in section 218 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 220 (2) of the Act.

### **Applicability**

- 2. This Standard applies to a person or manager connected with Namibia who is operating or intends to operate a collective investment scheme in Namibia in the circumstances where, pursuant to any law of a foreign country, or pursuant to any regulatory or supervisory action taken by any authority or body in a foreign country, the person or manager is suspended, disqualified or restricted in administering a collective investment scheme in that foreign country.

### **Action against manager**

- 3. (1) Where a manager connected with Namibia is suspended, disqualified or restricted from operating a collective investment scheme in a foreign country, NAMFISA may serve a notice on the manager:
  - (a) directing the manager to disclose the full details of the action taken and the reasons for the action taken in the foreign country within the time period specified in the notice;
  - (b) requesting the manager to disclose any exposure of investors to the CIS in the foreign country, and to explain whether and how investors may be affected; and
  - (c) informing the manager of the action NAMFISA may take in accordance with the Act or this standard.

(2) NAMFISA may, in the interest of the members of the public or the investors and depending on the circumstances of each case, take any of the following actions against a manager operating a CIS in Namibia:

- (a) conduct an inspection of the affairs of the manager to determine whether the manager is not engaging in similar conduct for which action was taken in the foreign country;
- (b) pending any inspection findings, restrict the manager from soliciting further investments from members of the public or investors; and
- (c) request the manager to submit documents relating to of any further action taken by a supervisory authority or body in the foreign country.

(3) NAMFISA may, provided that it does not prejudice the investors or the public interest, restore the manager to solicit further investments subject to any conditions NAMFISA may impose.

(4) NAMFISA may, after taking into consideration the reasons for the action taken against the manager in the foreign country, the inspection findings, if any, and the representations made by the manager, cancel or vary the registration of the manager in accordance with the Act.

(5) Before taking any of the foregoing action, NAMFISA must request the manager to make representations to NAMFISA as to the intended action and why NAMFISA should not take the action.

#### **Action against person**

4. (1) Where a person that intends to operate a CIS in Namibia is suspended, disqualified or restricted from operating a CIS in a foreign country, NAMFISA may serve a notice on the person:

- (a) directing the person to disclose the full details of the action taken and the reasons for the action taken in the foreign country within the time period specified in the notice; or
- (b) informing the person of the action NAMFISA may take in accordance with the Act or this standard.

(2) NAMFISA may, in the interest of the members of the public or the investors and depending on the circumstances of each case, take any of the following actions against a person intending to operate a CIS in Namibia:

(a) approve and register the applicant on such conditions NAMFISA may consider appropriate in the circumstances, including restriction on soliciting investments, and for such a period specified by NAMFISA; or

(b) refuse to approve an application for registration of a CIS in accordance with the Act.

(3) Before taking any of the foregoing action, NAMFISA must request the person to make representations to NAMFISA as to the intended action or action taken in terms of section 356(5) of the Act and why NAMFISA should not take the action.

#### **General**

5. (1) NAMFISA may, provided that it does not prejudice the investors or the public interest, inform the public of the action taken against the manager or the person.