

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 190(2) and section 410(5)(s) 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

REQUIREMENTS WITH RESPECT TO TRUSTEES AND CUSTODIANS OF A
COLLECTIVE INVESTMENT SCHEME

NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY

Standard No: CIS.S.4.7

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

Other information and material required for an authorized representative

Standard No. CIS.S.4.7

issued by NAMFISA under section 190(2) and section 410(5)(s) 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 201 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 trustee, custodian or an independent representative appointed by a trustee or custodian under section 189(6) the Act, hereinafter referred to, collectively, as a trustee or custodian.

Capital and reserves

- 3. A trustee or custodian of a CIS must have a minimum authorised and issued share capital and non-distributable reserves of N\$5,000,000 at all times.

General financial and commercial standing

- 4. (1) A trustee or custodian of a CIS must:
 - (a) have adequate human, technical and financial resources to execute its duties and functions under the Act efficiently and effectively;
 - (b) use proper control systems, including for the safe-keeping and segregation of investor assets and for calculating the value of participatory interests;
 - (c) have or be able to generate adequate financial resources that can cover operating expenses for at least 13 weeks at any time during the financial year;

(d) be independent from the manager or an affiliate of the manager; and

(e) carry on its business activities in such a way that the performance of its duties or the conduct of its functions cannot be questioned.

Fitness and propriety

5. (1) The functionaries of a trustee or custodian of a CIS must:

(a) be adequately experienced in the operation of a CIS;

(b) possess knowledge and understanding of a CIS and be able to operate the CIS efficiently and effectively;

(c) know the key regulatory requirements, including fiduciary duties in respect of investors, and comply with the requirements of the Act;

(d) be able to act independently and be independent in their decision-making in relation to investors; and

(e) apply sound business principles and ensure the financial soundness of the CIS.