

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 section 410(5)(v) 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 FOR THE EXERCISE OF VOTING POWER CONFERRED ON A
MANAGER BY THE ASSETS HELD IN A PORTFOLIO

NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY

Standard No: CIS.S.4.9

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

Other information and material required for an authorized representative

Standard No. CIS.S.4.9

issued by NAMFISA under section 410(5)(v) 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 managers and operators of collective investment schemes of which the assets confer voting rights.

Voting policies and procedures

- 3. (1) A manager or operator must adopt and implement written voting policies and procedures as part of the CIS governance, and the policies and procedures must, at a minimum, set out:
 - (a) the manner in which the manager or operator makes resolutions, including delegation of responsibility, in respect of voting decisions;
 - (b) the responsibility, with board oversight, for the voting decisions;
 - (c) the controls adopted to deal with material conflicts of interest;
 - (d) the manner in which voting decisions may be delegated and what controls are in place to ensure that delegated power is exercised accordingly; and
 - (e) the responsibility for and keeping of voting records and disclosure thereof.

- (2) The voting policies and procedures must specifically provide and be designed to ensure that the manager or operator:
- (a) monitors corporate actions and events and exercise the implicit or explicit voting power conferred by securities having voting rights;
 - (b) exercises any voting power in a manner that best serves the interests of the investors or does not subordinate investor interests to its own or other persons' interests, and ensures that any delegated power is exercised in like manner;
 - (c) does not delegate the voting power where voting is absolutely critical to the interests of investors and may have a lasting impact on investors;
 - (d) resolves any material conflicts of interest before voting decisions are made;
 - (e) manages any material conflicts of interest on an ongoing basis;
 - (f) makes independent and objective voting decisions based on publicly available information and the information provided by the trustee or custodian about the issuers of securities or the corporate action or event concerned;
 - (g) votes, and does not abstain, when the corporate actions or events are likely to affect investors' interests;
 - (h) is able to demonstrate why it has abstained from exercising any voting power;
 - (i) or a delegated person, does not use the voting power to subordinate the interests of the issuer of a security conferring voting rights to be exercised; and
 - (j) provides a copy of the voting record to investors, upon request.

Exercise of voting power

4. (1) A manager or operator must exercise any voting power unless the manager is able to demonstrate that it is abstaining or refraining or delegating for good reasons, including but not limited to where:
- (a) the costs of voting may outweigh the benefits;

- (b) voting may not necessarily achieve beneficial ends for the investors; or
 - (c) a positive outcome for investors may be achieved without voting.
- (2) Where a manager or operator is unable to exercise voting rights, the manager or operator must delegate the voting power to an independent person, such as a trustee or custodian, who must stand in as fiduciary and exercise the voting power.
- (3) Where a manager or operator delegates its voting power, the manager or operator must, in accordance with the voting policies and procedures, ensure that the delegated person exercises the voting power in accordance with this Standard and the voting policies and procedures and in the best interests of the CIS investors.
- (4) Where the voting power is exercised in a jurisdiction other than Namibia, a manager or operator must ensure that the voting power is exercised in accordance with the applicable laws of that jurisdiction, and that those decisions and voting are entered in the voting record.
- (5) A manager or operator and delegated persons owe a fiduciary duty, including a duty of care and a duty of loyalty, to the CIS and investors and must therefore, at all times, act in the best interests of the CIS and investors in exercising the voting power.
- (6) The exercise of voting power in a manner that is inconsistent with this Standard and the policies and procedures adopted by the manager or operator and specified by the manager or operator in any relevant mandate, or failure to exercise voting power constitutes an irregular or undesirable act or practice.
- (7) Failure to exercise voting power, for the purposes of this Standard, means that a manager, operator or delegated person, having the power, simply failed to exercise the voting power instead of refraining or abstaining, with reasons, from voting.
- (8) Where a manager, operator or delegated person fails to exercise the voting power, the manager, operator or that person must immediately enter the failure in the voting record and notify NAMFISA of the reasons for the failure and the potential impact of that failure on the CIS and investors, and a statement of remedial action.

General

5. (1) The policies and procedures may, in an appendix, set out how the manager would

vote if presented with specific resolutions of the issuer's board, e.g., for or against unlimited share authorization, requests for an advisory vote on compensation to reinforce director accountability to the issuer, or on a case-by-case basis.

(2) A manager or operator must keep and maintain a voting record for a period of at least five years from the date of creating, or of making entries into, the record which includes the following at a minimum:

- (a) the voting policies and procedures document;
- (b) statements concerning voting policies and procedures received from issuers or relevant market participants;
- (c) the voting decisions and actual votes or abstentions;
- (d) requests for voting information by investors or NAMFISA; and
- (e) any supporting documents, including for delegation, prepared by the manager or operator that were material to making, or formed the basis for, a decision.

(3) A manager or operator must, upon request, provide a voting record to investors or to NAMFISA, or permit investors to inspect the voting record and to make extracts therefrom at a reasonable cost during office hours of the manager or operator.