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No.	NAMFISA: Standards under the Financial Institutions and Markets Act, 2021
1	(Act No. 2 of 2021)

GENERAL NOTICE

NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY

No. 1 2021

STANDARDS UNDER THE FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021 (ACT NO. 2 OF 2021)

The Namibia Financial Institutions Supervisory Authority, under section 410(1) of the Financial Institutions and Markets Act, 2021 (Act No. 2 of 2021), hereby issues Standards set out in the Schedule.

GERSOM KATJIMUNECHAIRMAN

Windhoek, 2021

STANDARDS UNDER THE FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021
(ACT NO. 2 OF 2021)

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STANDARDS UNDER THE FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021
(ACT NO. 2 OF 2021)

SCHEDULE

PART I: PRELIMINARY

1. Definitions

(1) In these Standards:

“Act” means the *Financial Institutions and Markets Act, 2021* [Act No. 2 of 2021], and includes the regulations prescribed under the Act and the standards and other subordinate measures issued by NAMFISA under the Act;

“authorisation for registration” means the authorisation by a list applicant of a listed individual or listed company for registration by NAMFISA; [or: means the authorisation by a list applicant of a listed individual or listed company, within the meaning of Standard GEN 10-14, for registration by NAMFISA]

“category or categories of industry participants” means those industry participants that provide any particular type or types of financial services as their principal business;

“business function” includes a business activity, a business process and a business responsibility, but does not include the principal business of an industry participant;

“Companies Act” means the Companies Act, 2004 (Act No.28 of 2004);

“conflict of interest” means a situation which a financial institution or financial intermediary encounters, while rendering a financial service to a client, if that situation:

- (i) influences the objectivity of the financial institution or financial intermediary in any aspect of rendering the financial service to the client; or

- (ii) prevents the financial institution or financial intermediary from rendering the financial service to the client in an unbiased and fair manner or from acting in the best interest of the client.

“fiduciary” means a financial institution or a functionary of a financial institution;

“fiduciary duty” means a duty arising when a client or investor reposes confidence and trust in a fiduciary, to act in the interest of and for the benefit of the client or investor, with the necessary loyalty and care required of a fiduciary, before, during or after providing a financial service;

“Financial Intelligence Act” means the Financial Intelligence Act 2012 (Act No. 13 of 2012);

“financial institutions and markets sector” means the sector comprising the financial institutions and financial intermediaries registered under the Act;

“functionary” means a director, member of the board, principal officer, other officer and employee of a financial institution or financial intermediary;

“Industry” means participants in the financial services and markets sector, other than banking institutions.

“industry participants or industry participant” means the financial institutions and financial intermediaries that are participants in the financial services and markets sector, or any one of them;

“material information” means information that would enable a client or investor to make an informed decision or information that, if not provided, would result in the client or investor not making an informed decision.

“principal business” means the financial service or financial services for which an industry participant is registered under the Act and which are described in its certificate of registration issued under the Act;

“key person” means an employee of a financial institution or financial intermediary with a major decision making role and the responsibility, either alone or with others, for the management of all aspects of rendering a financial service to a client or investor.

“list applicant” means:

- (a) for the purposes of Chapter 2 of the Act, a registered insurance company, as defined in section 4 and referred to in subsection 55(1) of the Act;
- (b) for the purposes of Chapter 3 of the Act, the following, as defined in section 78 and referred to in subsections 91(1) to (4) of the Act:
 - (i) a registered exchange
 - (ii) a registered investment manager;
 - (iii) a registered securities advisor that is a company; and
 - (iv) a registered securities dealer that is a company; and
- (c) for the purposes of Chapter 4 of the Act, a manager, as defined in section 168 and referred to in subsection 180(1) of the Act;

“listed individual” means an individual who is:

- (a) for the purposes of Chapter 2 of the Act, an insurance agent, as defined in section 53 and referred to in subsection 55(1) of the Act;
- (b) for the purposes of Chapter 3 of the Act, the following, as defined in section 78 and referred to in subsections 91(1) to (4) of the Act:

- (i) an authorised user;
 - (ii) a portfolio manager;
 - (iii) an authorised advisor; and
 - (iv) an authorised representative; and
- (c) for the purposes of Chapter 4 of the Act, an authorised representative, as defined in section 168 and referred to in subsections 180(1) of the Act;

“listed company” means a company that is:

- (a) for the purposes of Chapter 3 of the Act, an authorised user as defined in section 78 of the Act, and referred to in subsection 91(1) of the Act;
- (b) for the purposes of Chapter 4 of the Act, an authorised representative as defined in section 168 of the Act, and referred to in subsection 180(1) of the Act;

“material business activity” means the primary business activity or activities of a financial institution or financial intermediary;

“primary business activity or activities” mean the primary business activity or activities for which a financial institution or financial intermediary is registered under the Act and which are described in its certificate of registration issued under the Act;

“material business function” means a business function of an industry participant that, while not the principal business of that industry participant, nevertheless has the potential, if disrupted, for a significant and negative qualitative or quantitative impact on the finances, reputation or operation of the industry participant or on its ability to manage key risks effectively, or on its principal business;

“relevant matters” means all input used in facilitating the day to day running of the material business activity of a financial institution or financial intermediary.

“service provider” means a person who provides a business function to an industry participant;

“outsourcing arrangement” means an arrangement whereby a service provider undertakes to provide a business function to an industry participant;

“Outsourcing Agreement” means the agreement, referred to in clause 7, of Standard 10.10 documenting an outsourcing arrangement with respect to a material business function;

“outsourcing” means the process of entering into an outsourcing arrangement;

(2) Words and phrases defined in the Act have the same meaning in these Standards, 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) entity;
- (vii) financial crime;
- (viii) financial institution;
- (ix) financial intermediary;
- (x) financial service;
- (xi) foreign entity;
- (xii) NAMFISA;
- (xiii) officer;
- (xiv) principal officer; and
- (xv) valuator.

(b) control, as defined in section 3 of the Act;

(c) as defined in section 78 of the Act:

- (i) authorised user;
- (ii) exchange;
- (iii) investment management; and
- (iv) investment manager

2. Conflict or inconsistency

Where any provision in these Standards is inconsistent or in conflict with a provision of the Act or regulations, the provision of the Act or regulations prevail to the extent of the inconsistency or conflict.

3. Interpretation of Standards

These Standards must be read in conjunction with the Act and other standards and regulations as well as relevant guidelines, bulletins, rules and other measures issued under the Act.

4. Citation of Standards

These Standards may be cited as the General Standards.

5. Commencement

These Standards were issued by NAMFISA on {date} and will come into effect on {date}.