

**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 subsection 410 (4)(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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INFORMATION ABOUT AN ISSUER AND SECURITIES BEING ISSUED TO CLIENTS  
OR POTENTIAL CLIENTS OF A REGULATED PERSON WHEN THE SECURITIES ARE  
BEING SOLD BY OR THROUGH THAT REGULATED PERSON

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NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY

**Standard No: FM.S.3.4**

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

**Annual report of self-regulatory organization**

**Standard No. FM.S.3.4**

*issued by NAMFISA under section 86 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. (1) This Standard applies to every regulated person to the extent that securities are sold by or through the services of that regulated person and to the issuer of those securities.
- (2) Where the Standard is applicable to a regulated person, that regulated person must provide the information on the matters referred to in the applicable sub-clauses below to clients or potential clients.

## Required information

3. (1) Without prejudice to any requirement under the Companies Act, the regulated person concerned must provide the following information about an issuer:

- (a) the name, address and date and place of incorporation and registration of the issuer;
- (b) a brief summary of the business activities or proposed business activities of the issuer;
- (c) a brief history of the issuer since incorporation including any restructuring, reorganization or mergers or acquisitions, changes in its capital structure, and borrowings, if any;
- (d) if the issuer is a foreign entity, its country of incorporation and date of registration in Namibia;
- (e) a copy of the most recent audited annual financial statements and interim report of the issuer;
- (f) details of any person that controls the issuer, and if the issuer is part of a group, a description of the group and the issuer's position in the group;
- (g) names, occupations and addresses of the directors of the issuer, including whether executive or non-executive, and their terms of office;
- (h) details of the auditor of the issuer and the date of appointment, and the names of the trustees under the trust deed under which any debentures were issued or are proposed to be issued; and
- (i) a description of the capital structure of the issuer, including without limitation, equity and non-equity securities.

(2) In addition to any disclosures required under the Companies Act, the regulated person concerned must provide the following information about the securities being issued or proposed to be issued by the issuer:

- (a) a full description of the securities, including, without limitation, any voting, conversion, dividend and redemption rights, as applicable, and the amount,

exercise price, expiration date and purchase price of options or share warrants, if any, and in the case of debentures, whether secured or unsecured;

- (b) the class of securities and nominal value;
- (c) the number and price of the securities being issued;
- (d) the purpose for which the proceeds of sale of the securities will be used;
- (e) the net proceeds to be received by the issuer;
- (f) whether the net proceeds will be sufficient for the purposes referred to in sub- clause (d);
- (g) that a client may not be able to readily sell the securities in the market;
- (h) any restrictions on the resale of the securities;
- (i) the terms of the offer, including any rights that the client or proposed client may have to cancel an agreement to purchase the securities;
- (j) the particulars of any debt securities being issued including any issue of debt securities in the past;
- (k) the debt to equity ratio of the issuer prior to and after the issue of the securities;
- (l) the rating, if any, of the securities by a rating agency;
- (m) the tax consequences, if any, of the acquisition of the securities;
- (n) if the issuer or any person that controls the issuer is an affiliate or associate of the regulated person, the relationship between the regulated person and the issuer or person; and
- (o) the name of every registered exchange or foreign exchange on which the issuer's securities are listed or are proposed to be listed and whether in-principle approval has been obtained from the relevant exchange.

(3) A signed, hard copy of the report must be submitted in writing to NAMFISA and to the registered exchange on which the securities concerned are listed if:

- (a) the electronic copy referred to in sub-clause (1) is not signed;
- (b) an electronic system has not been designated by NAMFISA; or
- (c) the electronic system designated by NAMFISA is malfunctioning or unavailable.

### **Time periods**

- 4. The regulated person concerned must provide the offer document to clients or potential clients within a reasonable period before the closing date of the offer to enable the clients or potential clients to make informed decisions.

### **Disclosures**

- 5. (1) If the issuer or any person that controls the issuer is an affiliate or associate of the regulated person concerned, the regulated person concerned must disclose the relationship between the regulated person and the issuer or the person.  
  
(2) In addition to any relationship between the issuer or a person that controls the issuer and the regulated person described in sub-clause 2(n), the regulated person must identify and disclose to the client or potential client any other conflicts of interest that exist or that might arise between the regulated person and the issuer or between the regulated person and the client or potential client, as a result of the offer of the securities to the client or potential client.  
  
(3) The regulated person must inform the client or potential client whether, in the opinion of the regulated person, the securities are a suitable investment given the investment needs and objectives, the financial circumstances and the risk tolerance of the client or potential client.  
  
(4) The issuer must ensure that the regulated person provides the offer documents to clients or potential clients and that the offer documents:
  - (a) contain material disclosures to enable clients or potential clients to make informed decisions;
  - (b) contain information that is not misleading in a material respect or that is calculated to be manipulative or deceptive;

- (c) are truthful, fair and in plain language as may be provided in any Standard issued by NAMFISA;
  - (d) do not contain a statement, promise or forecast which is not factual or constitutes a misrepresentation in the circumstances under which these are made;
  - (e) are not based on matters which are extraneous to the contents of the offer document;
  - (f) state the time limit for the validity of the offer documents;
  - (g) include the memorandum of articles and association of the issuer;
  - (h) include the listing approval by a registered exchange or a foreign exchange, if any; and
  - (i) include a copy of the trust deed relating to debentures issued or proposed to be issued.
- (5) Where there are any material changes to the matters contained in an offer document, the regulated person must ensure that the changes are effected and that the clients or potential clients to whom an offer document was provided or is about to be provided are notified of these changes forthwith but in any event before the clients or potential clients are expected to make a decision.
- (6) The regulated person and the issuer must ensure that offer documents are in the public interest and enhance confidence in the capital markets.
- (7) NAMFISA may issue a directive to the regulated person concerned to take specified remedial action and may impose penalties, as prescribed by the Minister, for any contravention of this Standard.