NAMFISA
NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY

TO:	**INVESTMENT MANAGERS** **LINKED INVESTMENT SERVICE PROVIDERS** **STOCK-BROKERS** **UNIT TRUST MANAGEMENT COMPANIES** **UNLISTED INVESTMENT MANAGERS**
GUIDELINES NO.:	**AML/01/2023**
DATE:	**31 MAY 2023**
SUBJECT:	**GUIDELINES ON APPLICATION OF ENHANCED MEASURES TO MITIGATE ML/TF/PF RISKS EMERGING FROM THIRD-PARTY PAYMENTS.**

1. DEFINITIONS AND ACRONYMS

AI	Accountable Institution as described under Schedule 1 of FIA.
AML	Anti-Money Laundering.
Business relationship	An arrangement between a client and an accountable or reporting institution for the purpose of concluding transactions on a regular basis.
CEO	Chief Executive Officer appointed in terms of the Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No. 3 of 2001).
CFT	Combating the Financing of Terrorism.
Client	A person (Natural or legal) who has entered into a business relationship or a single transaction with an AI, and the words “customer” and “investor” have a corresponding meaning.
CPF	Combating Proliferation Financing.
FIA	Financial Intelligence Act, 2012 (Act No.13 of 2012).
FIC	Financial Intelligence Centre established in terms of the FIA.
ML	Money Laundering.
NAMFISA	Namibia Financial Institutions Supervisory Authority established in terms of the Namibia Financial

	Institutions Supervisory Authority Act, 2001 (Act No. 3 of 2001).
Person	A natural or legal person.
PF	Proliferation Financing.
Single transaction	A transaction other than a transaction concluded in the course of a business relationship.
Transaction	A transaction concluded between a client and an AI in accordance with the type of business carried on by that AI and includes attempted transactions.
Third party	A third party is any natural or legal person other than the client.
Third-party payment	Third-party payment is a payment of investment funds by an AI to a natural or legal person other than the client.
TF	Terrorism Financing.
UNSC	United Nations Security Council.

2. INTRODUCTION

2.1 Being a Supervisory Body in terms of Schedule 2 of FIA, NAMFISA has a statutory obligation [section 35(2) of the FIA] to supervise, monitor, and enforce compliance with the provisions of FIA or any regulation, order, circular, notice, determination or directive issued in terms of FIA, in respect of all accountable and reporting institutions supervised by it.

2.2 Furthermore, section 35(15) (d) of FIA confers the mandate upon NAMFISA to,

"issue guidelines to assist accountable and reporting institutions in detecting suspicious patterns of behaviour in their clients and these guidelines shall be developed taking into account modern and secure techniques of money management and will serve as an educational tool for accountable and reporting institutions' personnel".

2.3 In light of the above, NAMFISA issues these guidelines to AIs in the securities sector to effectively apply enhanced measures to mitigate ML/TF/PF risks emerging from the industry practice of processing third-party payments.

3. BACKGROUND

3.1 During 2022, NAMFISA in collaboration with the Namibia Savings and Investment Association (NaSIA) conducted a joint typology study on the trend and types of third-party payments processed in the securities sector.

3.2 The aim of the typology study was to promote the understanding of the magnitude of the risks of ML/TF/PF emerging from third-party payments so as to enable AIs in the securities sector to mitigate the risks of ML/TF/PF associated with this practice.

3.3 Consequent to the aforementioned study, these guidelines are issued to ensure effective application of AML/CFT/CPF enhanced measures to mitigate the risks of ML/TF/PF emerging from third-party payments.

4. APPLICATION

4.1 These guidelines apply to all AIs in the securities sector as listed below:

4.1.1 Stock-brokers as defined in the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985);

4.1.2 Unit trust management companies registered under the Unit Trusts Control Act, 1981 (Act No. 54 of 1981);

4.1.3 Investment managers approved under the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985);

4.1.4 Linked investment service providers approved under the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985); and

4.1.5 Unlisted investment managers registered under the regulations made under the Pension Funds Act, 1956 (Act No. 24 of 1956).

5. TYPES OF THIRD-PARTY PAYMENTS

5.1 Third-party payment involves payment of redeemed investments into third parties' bank accounts by AIs at the instructions of investors. These bank accounts are –

5.1.1 different from investors' bank accounts that were nominated at the on-boarding stage; and

5.1.2 held in the names of third parties to whom redeemed investments should be paid as per instructions by investors.

5.2. Third-party payments take the form of –

5.2.1 debit settlement; and

5.2.2 payment of commodities.

5.3 Third-party payments, under rare circumstances, are taking the form of –

5.3.1 transfers between an individual investment account and a Family Trust or Close Corporation investment account in the event an investor is managing two or more separate investment accounts;

5.3.2 transfers between investment accounts of spouses or related persons, for example awarding of gifts;

5.3.3 transfers to/from minors' investment accounts by parents/guardians;

5.3.4 intercompany transfers between subsidiaries or related parties' investment accounts in a conglomerate setup;

5.3.5 withdrawals made from unit trust portfolios when clients transfer their funds from one unit trust to another unit trust fund;

5.3.6 transfer to the cessionary when an investor ceded their unit trust investments to an external party;

5.3.7 transfer of funds from one class of a unit trust to a different class (switches); and

5.3.8 transfer of funds from a minor's account into the account of a parent/guardian.

6. MANIFESTATION OF ML/TF/PF RISKS

6.1 In terms of the NAMFISA's ML/TF/PF Sectoral Risk Assessment, it was found that, the factors listed below heightened the ML/TF/PF risks in the securities sector:

6.1.1 The non-face-to-face on-boarding of clients (investors) due to the use of online platforms renders identification and verification of clients' information difficult.

6.1.2 Account servicing, including investment instructions, which may be given via non-face to face mediums such as email, rendering the distribution channel vulnerable to abuse for ML/TF/PF activities.

6.1.3 An investor holding or designating a foreign bank account or demands that disinvestments be paid to a designated foreign bank account in a high-risk or non-cooperative jurisdiction.

6.1.4 Entities/individuals involved directly or indirectly in proliferation activities instructing AIs that redeemed investments be paid into third-party bank accounts.

7. GUIDELINES ON APPLICATION OF AML/CFT/CPF ENHANCED MEASURES

7.1 All AIs listed in paragraph 4 of these guidelines are advised to apply the guidance provided herein in order to adequately mitigate the risks of ML/TF/PF associated with third-party payments by applying the following AML/CFT/CPF measures:

7.1.1 Assess the risks of ML/TF/PF associated with every third-party payment before conducting any such third-party payment on behalf of their clients;

7.1.2 Apply enhanced due diligence measures such as –

7.1.2.1 obtain and verify identification information in relation to a third party;

7.1.2.2 verify whether investment redemption/withdrawal instructions are indeed from the investor. In the event that non-face-to-face platforms are used for purposes of investment redemption, assurance should be solicited from the investor using other reliable platforms for verification;

7.1.2.3 verify information/documentation using independent data sources; and

7.1.2.4 if a person is acting on behalf of the investor, obtain and verify identification information of the person acting on behalf of the investor. AIs must also verify the authority to act on behalf of the investor by requesting confirmation from the investor through reliable platforms;

7.2 Monitor third-party transactions to detect unusual/suspicious transactions for purposes of reporting to the FIC;

7.3 Screen all parties or persons involved in the third-party payment against the UNSC sanctions lists; and

7.4 Conduct, as envisaged in section 39(8) and 39(5)(c) of the FIA read with Regulation 24(5) of the regulations made under FIA, an independent audit on internal controls to gain assurance that the controls adopted are adequate and effective so as to mitigate ML/TF/PF risks.

OR

7.5 Cease or refrain from engaging in the practice of third-party payments if the above risk mitigating measures cannot be effectively applied so as to mitigate ML/TF/PF risks.

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