GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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General Notice

NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY

No. 659 2023

DRAFT PROPOSED STANDARDS UNDER THE FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021

The draft standards - CIS.S.4.8 and CIS.S.4.22 - as set out in Schedule 1, are published by the Namibia Financial Institutions Supervisory Authority (NAMFISA) under section 409(3) of the Financial Institutions and Markets Act, 2021 (Act No. 2 of 2021).

All financial institutions, financial intermediaries, industry associations or self-regulatory organisations are invited to make representations in writing to NAMFISA with respect to the draft proposed standards, within 30 calendar days after the date of publication. Such representations will be taken into account in determining whether to issue the standards as originally published or in a modified form.

Written representations must be supplied in the template provided under Schedule 3, and must be submitted to NAMFISA at the Upper Ground floor, Gutenberg Plaza, 51 – 55 Werner List Street, Windhoek or email: acloete@namfisa.com.na and projectnewdawn@namfisa.com.na.

K. S. MATOMOLA
CHIEF EXECUTIVE OFFICER
NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY

SCHEDULE 1

FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021

COLLECTIVE INVESTMENT SCHEMES

MANNER IN WHICH, AND THE LIMITS AND CONDITIONS SUBJECT TO WHICH ASSETS THAT MUST BE INCLUDED IN A PORTFOLIO OF A COLLECTIVE INVESTMENT SCHEME AT THE TIME THAT A PARTICIPATORY INTEREST IS SOLD OR OFFERED FOR SALE

Standard No. CIS.S.4.8

issued by NAMFISA under section 410(5)(f) and 410(5)(u), read with sections 187 and 233, 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. 2 of 2021), and it must be read with the regulations prescribed under the Act and the standards and other subordinate measures issued by NAMFISA under the Act;

(b) "assets in liquid form" means –

(i) any amount of cash consisting of Bank of Namibia notes and coins;

(ii) any balance in an account with a –

(aa) bank;

(bb) branch of a foreign institution, which institution is authorised in terms of the Banking Institutions Act, 1998 (Act No. 2 of 1998) to conduct the business of a bank by means of such branch; or

(cc) foreign bank;

(iii) any positive net balance in a settlement account, other than a margin account, operated for the buying and selling of underlying assets;

(iv) money market instruments; or

(v) participatory interests in a money market portfolio,

provided that the assets referred to in sub-paragraphs (i), (ii), (iv) and (v) are capable of being converted into cash within seven days, without any penalty on capital in terms of the conditions of the security;

(c) "bank" means a body of persons authorised to carry on the business of banking, and for this Standard includes:

(i) the Bank of Namibia referred to in section 2 of the Bank of Namibia Act, 2020 (Act No. 1 of 2020);

(ii) a banking institution defined in section 1 of the Banking Institutions Act, 1998 (Act No. 2 of 1998); and

(iii) the Post Office Savings Bank as defined in section 1 of the Posts and Telecommunications Act, 1992 (Act No. 19 of 1992);

(d) "CIS" means a collective investment scheme as defined in section 168 of the Act;

(e) "deposit" means an amount of money paid by a person to a bank, subject to an agreement in terms of which the full amount of money, or any part thereof, will conditionally or unconditionally and with or without interest or a premium, be repaid to such person –

(i) on demand;

(ii) at a specified or unspecified date;

(iii) after a predetermined period of time;

(iv) after a predetermined period of notice of withdrawal; or

(v) subject to an agreement entered into by the parties concerned,

despite that such repayment is limited to a fixed amount or that a transferable or non-transferable certificate or other instrument providing for the repayment of the amount is issued in respect of such amount;

(f) "financial asset" means an asset defined in the International Financial Reporting Standard 9;

(g) "financial instrument" means –

(i) a listed financial instrument including –

(aa) a futures contract;

(bb) an option contract;

(cc) a warrant;

(dd) an index tracking certificate; and

(ee) an instrument based on any underlying asset or basket of underlying asset;

(ii) an unlisted financial instrument including –

(aa) forward currency swap;

(bb) forward currency option issued by a bank;

(cc) interest rate swap;

(dd) exchange rate swap; and

(ee) index swap;

(h) "financial liability" means a liability as defined in the International Financial Reporting Standard 9;

(i) "foreign bank" means a person authorised or registered to conduct banking business under the laws of any state, country, colony or territory other than Namibia, and which conducts banking business in such other state, country, colony or territory;

(j) "guarantee" means an undertaking to provide the financial support necessary to ensure full and timely servicing of the debt and redemption of the debt;

(k) "index" means the compilation of securities listed on an exchange or a number of exchanges or the compilation of prices or rates of non-equity securities, publicly available from a recognised index compiler, representing a statistical indicator of the aggregate value of the securities comprising the index, provided that the composition of such an index meets the same level of diversification as contemplated in this Standard;

(l) "issuer" means an issuer of securities, including an issuer of money market instruments;

(m) "money market" means the sector of the financial market that includes financial instruments that have a maturity or redemption date that is one year or less at the time of issuance;

(n) "money market instrument" means, subject to sub-clause (2), high quality debt securities issued by government and corporate borrowers, whose maturity or redemption date is up to one year, that seek to preserve capital and provide daily liquidity, while offering returns in line with money market rates, and includes a banker's acceptance, bond, commercial paper, debenture, deposit, negotiable certificate of deposit, state-owned enterprise bill, promissory note, trade bill and treasury bill;

(o) "NAV" means the "net asset value" of a participatory interest as determined in accordance with Standard No. CIS.S.4.11 – Meaning of "Net Asset Value" for the purposes of section 238 of the Act;

(p) "non-equity security" means a financial instrument issued by an issuer, evidencing or acknowledging the liability of the issuer to repay an amount of money specified in the security, subject to the conditions whereto the security is issued;

(q) "offer" means to sell or offer to sell for cash any participatory interest to a client or a potential client;

(r) "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;

(s) "physical exchange traded fund" means an exchange traded fund which tracks an index or the value of precious metals and which physically holds the underlying assets it is tracking;

(t) "physical exchange traded notes" means exchange traded notes whose issuer physically holds the underlying assets of the index they are tracking;

(u) "recognised index compiler" means an entity which compiles and publishes indices which are acceptable to an exchange; and

(v) "securities" means –

(i) shares, preference shares, whether redeemable, convertible or perpetual and exchange depository receipts in public companies, whether listed or not;

(ii) listed participatory interests in a CIS in property;

(iii) participatory interests in a CIS in securities, whether listed or not;

(iv) bonds, debentures, debenture stock and debenture bonds;

(v) notes, whether secured or not, and whether or not they have inherent option rights or are convertible;

(vi) a derivative instrument and an option, warrant, swap, certificate or other instrument acknowledging, conferring or creating a right to subscribe to, acquire, dispose of, or convert a security;

(vii) any asset referred to in the definition of "assets in liquid form" in paragraph (b);

(viii) any asset referred to in the definition of "financial instrument" in paragraph (g);

(ix) any money market instrument; or

(x) any other instrument declared by NAMFISA by notice under section 78(3)(b) of the Act.

(2) Money market instruments –

(a) are high quality debt securities issued by government and corporate borrowers, whose maturity or redemption date is up to one year, and that seek to preserve capital and provide daily liquidity, while offering returns in line with money market rates;

(b) are short-term fixed income, or income generating, financial instruments that provide a specified amount of interest plus repayment of the principal amount at maturity;

(c) offer low risk and are easily converted into cash;

(d) are financial instruments that have the objective to provide investors with preservation of capital and daily liquidity;

(e) are broadly used by both retail and institutional investors as an efficient way to achieve diversified cash management; and

(f) are financial instruments that act as a link between investors seeking investments in liquid assets and diversification of credit risk exposure, and borrowers seeking short-term funding.

(3) 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) client;

(ii) NAMFISA; and

(b) as defined in section 168 of the Act –

(i) assets;

(ii) collective investment scheme;

(iii) custodian;

(iv) deed;

(v) investor;

(vi) manager;

(vii) participatory interest;

(viii) portfolio; and

(ix) trustee.

CHAPTER 1
STANDARD PORTFOLIO
PART A: GENERAL

Applicability

2. This Standard applies to managers, trustees and custodians of CISs.

Prohibition

3. A manager must not sell or offer for sale any participatory interest in a portfolio of securities unless, at the time of selling or such offer, such portfolio consists of assets in the manner, within the limits and on the conditions set out in this Standard and in accordance with the deed.

Initial size of a portfolio

4. The minimum value of a portfolio at the time a participatory interest is sold or offered for sale must be N$500,000 and the NAV of the participatory interest must be determined based on this value in accordance with Standard No. CIS.S.4.11 - Meaning of “Net Asset Value” for the purposes of section 238 of the Act.

Manager to make investment in every portfolio

5. A manager must, of its own resources, have at all times invested in every portfolio 10% of the market value of the portfolio or a minimum investment of N$1,000,000.

PART B: CONDITIONS AND LIMITS OF INCLUSION

Equity securities portfolio

6. A manager may include in a portfolio –

(a) equity securities issued by any one entity –

(i) with a market capitalisation of less than N$2 billion, to an amount of 5% of the market value of all the assets comprised in the portfolio; or

(ii) with a market capitalisation of N$2 billion or more, 10% of the market value of all the assets comprised in the portfolio,

provided that where a portfolio breaches the limits set out in sub-paragraphs (i) and (ii) due to appreciation or depreciation of the market value of the underlying equity securities comprised in that portfolio, or as a result of any non-optional corporate action by the relevant entity, the manager may not purchase any further equity securities issued by that entity for as long as the market value of an equity security in any particular entity exceeds the determined limits;

(b) 100% of that equity security’s weighting in its relevant index, subject to –

(i) a maximum of 20% of the market value of all the assets comprising the portfolio where the benchmark is the index representing the overall market or exchange; or

(ii) a maximum of 35% of the market value of all the assets comprising the portfolio where the benchmark is an index which is a sub-set of an overall market or exchange index; and

(c) equity securities of any one class issued by any one entity –

(i) with the market capitalisation of less than N$2 billion, 5% of the aggregate amount representing all the equity securities of any one class issued by that entity;

(ii) with the market capitalisation of N$2 billion or more, 10% of the aggregate amount representing all the equity securities of any one class issued by that entity; or

(iii) which is an investment company, 10% of the aggregate amount of the issued securities of any one class issued by any such entity, subject to –

(aa) an overall limit of 15% of the aggregate amount of equity securities of any one class issued by an entity within the same group as the manager, across the portfolios in all schemes administered by the manager; and

(bb) an overall limit of 24% of the aggregate amount of equity securities of any one class issued by an entity other than an entity within the same group as the manager, across the portfolios in all schemes administered by the manager.

7. (1) Where the limits set out in clause 6(c) are breached due to an amalgamation, cession, transfer or take-over in terms of the Act, or as a result of any non-optional corporate action by the relevant entity, the manager –

(a) may not make any further investments in equity securities of the class in question as long as the limits are exceeded; and

(b) must, within 12 months after the date on which the amalgamation, cession, transfer, takeover or non-optional corporate action becomes effective, or within such further period as NAMFISA may approve upon application by the manager, reduce the equity securities of the class in question to the determined limits.

(2) At least 90% of the market value of an equity securities portfolio must consist of –

(a) securities traded on an exchange;

(b) securities other than exchange securities acquired by the manager pursuant to the exercise of rights attaching to any exchange securities included in the portfolio; or

(c) financial instruments other than equity securities to the limits determined in sub-clause (6) on condition that –

(i) the financial instrument may only be included for purposes of efficient portfolio management with the aim of reducing risk, reducing cost or generating capital or income for the portfolio or to achieve the investment objective of the portfolio within acceptable risk levels; and

(ii) the financial instrument is not used to leverage the portfolio, and are at all times covered.

(3) If any securities which are not listed on an exchange are included in a portfolio, such securities must be valued daily based on a generally recognised methodology and by a person acceptable to the trustee, subject to the requirements of the Act.

(4) Prior to a manager including any financial instruments or unlisted securities in a portfolio, it must satisfy the trustee that a risk management program designed to identify, measure, on a daily basis, and adequately cover risks emanating from exposure to the security, is in place and is efficient.

(5) A manager may include in a portfolio, participatory interests in portfolios (“underlying portfolios”) of CISs in securities, including exchange traded funds registered as CISs, CISs in property or of foreign collective investment schemes to a maximum aggregate value of 80% of the market value of the first-mentioned portfolio, provided that –

(a) the maximum exposure to any one underlying portfolio may not exceed 20% of the market value of the first-mentioned portfolio;

(b) in the case of an underlying portfolio which is part of a foreign collective investment scheme, the foreign collective investment scheme must –

(i) be subject to a due diligence investigation conducted by the manager, to the satisfaction of the trustee, to ascertain whether the portfolio would qualify for approval in terms of the Act and that the portfolio is available for investment and is not otherwise prohibited in its domicile of registration; and

(ii) be subject to an annual review by the manager to ensure that it continues to comply with the requirements of the Act if the foreign collective investment scheme has not been approved in terms of the Act;

(c) in the case of an underlying portfolio that is managed, directly or by delegation, by the same manager or by any other entity with which the manager is linked by common management or control, or by a substantial direct or indirect holding, that manager or other entity may not charge any form of manager’s charge (including initial or upfront fees, redemption fees or exit fees) on the underlying portfolio;

(d) in the case of an underlying portfolio holding participatory interests in other portfolios, each of those portfolios may not constitute more than 20% of their respective investments in other portfolios;

(e) a manager should only include physical exchange traded funds or physical exchange traded notes in a portfolio, and on condition that the exchange traded fund or exchange traded note ordinarily owns the securities as permitted by this Standard; and

(f) a manager must not include exchange traded funds or exchange traded notes which are capable of obtaining leveraged exposure to underlying assets.

(6) The limit determined in sub-clause (5) may only be exceeded if the excess is due to appreciation or depreciation of the value of the underlying participatory interests constituting the portfolio, and on condition that the manager must not, for as long as the excess continues, purchase any further participatory interests for the portfolio.

(7) The manager must ensure that a portfolio's investment policy provides for the inclusion of participatory interests in that portfolio.

Non-equity securities and foreign non-equity securities

8. A manager may include in a portfolio:

(a) non-equity securities issued or guaranteed by –

(i) the Government of Namibia, to an amount of 100% of the market value of all the securities comprised in the portfolio;

(ii) a government in the Common Monetary Area, provided that Namibia remains a member of the Common Monetary Area, to an amount of 90% of the market value of all the securities comprised in the portfolio, where the gross domestic product of the country concerned exceeds N$100 billion per government;

(iii) a foreign government, which has been assigned a foreign currency sovereign rating not lower than that of Namibia, to an amount of 10% of the market value of all the securities comprised in the portfolio per government;

(iv) the Bank of Namibia, to an amount of 100% of the market value of all the securities comprised in the portfolio; or

(v) the African Development Bank, to an amount of 50% of all the assets comprised in the portfolio;

(b) money market instruments, including loans, bonds or securities in the nature of a loan to a state-owned enterprise, a local authority council or a regional council in Namibia or an equivalent institution in the Common Monetary Area or in a foreign country, not exceeding –

(i) 20% of the market value of all the securities comprised in the portfolio per institution in Namibia;

(ii) 15% of the market value of all the securities comprised in the portfolio per institution in the Common Monetary Area, on the condition that the instrument of security of the institution in the Common Monetary Area is listed and traded on a recognised stock exchange; or

(iii) 5% of the market value of all the securities comprised in the portfolio per institution in a foreign country;

(c) money market instruments, including advances, deposits including negotiable certificates of deposit, loans, bonds or securities in the nature of a loan to a bank and paid up share capital in respect of a Namibian building society, not exceeding, per institution –

(i) 30% of the market value of all the securities comprised in the portfolio if the market capitalisation of the institution exceeds N$5 billion; or

(ii) 20% of the market value of all the securities comprised in the portfolio if the market capitalisation of the institution does not exceed N$5 billion;

(d) money market instruments, including advances, deposits including negotiable certificates of deposit, loans, bonds, or securities in the nature of a loan to a bank in the Common Monetary Area, not exceeding, per institution –

(i) 25% of the market value of all the securities comprised in the portfolio where the market capitalisation of the bank exceeds N$50 billion; or

(ii) 10% of the market value all the securities comprised in the portfolio where the market capitalisation of the foreign bank does not exceed N$50 billion;

(e) money market instruments, including advances, deposits including negotiable certificates of deposit, loans, bonds, or securities in the nature of a loan to a foreign bank in a foreign country, not exceeding, per institution –

(i) 10% of the market value of all the securities comprised in the portfolio where the market capitalisation of the foreign bank exceeds N$50 billion; or

(ii) 5% of the market value of all the securities comprised in the portfolio where the market capitalisation of the foreign bank does not exceed N$50 billion;

(f) corporate loans, debentures, debenture stock, and debenture bonds, notes or securities in the nature of a loan issued by an institution incorporated in Namibia, authorised by law to issue loans, bonds and securities of the issuing Namibian institution, not exceeding, per institution –

(i) 20% of the market value of all the securities comprised in the portfolio, where the total assets of the institution, as reflected in the latest audited annual financial statements which are not more than a year old, exceed N$500 million; or

(ii) 15% of the market value of all the securities comprised in the portfolio where the total assets of the institution, as reflected in the latest audited annual financial statements which are not more than a year old, do not exceed N$500 million,

provided that no inter-company corporate loans, debentures, debenture stock, and debenture bonds, notes or securities in the nature of a loan are made;

(g) corporate loans, debentures, debenture stock, and debenture bonds, notes or securities in the nature of a loan issued by an institution in the Common Monetary Area, not exceeding, per institution –

(i) 15% of the market value of all the securities comprised in the portfolio where the total assets of the institution as reflected in the latest audited annual financial statements which are not more than a year old exceeds N$1 billion; or

(ii) 10% of the market value of all the securities comprised in the portfolio where the total assets of the institution, as reflected the latest audited financial statements which are not more than a year old do not exceed N$1 billion,

provided that no inter-company corporate loans, debentures, debenture stock, and debenture bonds, notes or securities in the nature of a loan are made; or

(h) corporate loans, debentures, debenture stock, and debenture bonds, notes or securities in the nature of a loan issued by an institution in a foreign country, not exceeding, per institution –

(i) 10% of the market value of all the securities comprised in the portfolio where the total assets of the institution, as reflected in the latest audited financial statements which are no more than a year old, exceeds N$1 billion; or

(ii) 5% of the market value of all the securities comprised in the portfolio where the total assets of the institution, as reflected in the latest audited financial statements which are no more than a year old, do not exceed N$1 billion,

provided that no inter-company corporate loans, debentures, debenture stock, and debenture bonds, notes or securities in the nature of a loan are made.

9. (1) Where a manager includes preference shares in a portfolio, the shares must be treated as equity securities where the issuer of the shares has included them as part of its share capital on its balance sheet.

(2) Preference shares which do not form part of the share capital of an issuer must be treated as non-equity securities.

(3) Where a manager enters into a repurchase agreement, the manager must ensure that –

(a) the securities which are the subject of such an agreement, and are to be included in a portfolio on the basis that one security has been exchanged for another, are –

(i) of equal value; and

(ii) included subject to the limits and conditions of this Standard and the investment policy contained in the supplemental deed;

(b) the portfolio does not suffer any losses other than changes in value attributable to market movements; and

(c) any gains are applied for the benefit of the portfolio.

(4) The manager must assess the quality of a security, and in doing so the manager must consider all applicable factors including the liquidity profile and the nature of the asset class represented by the security.

(5) In carrying out its due diligence investigation, the manager must not place inappropriate reliance on the credit rating of the security.

(6) The manager must ensure that if the inclusion of instruments in a portfolio will result in further exposure to another issuer, whose instruments are already included in the portfolio, the exposure created by the inclusion of the first-mentioned instruments is taken into account when determining the overall permissible exposure to the issuer.

(7) Despite any limits determined or provisions made in this Standard, in the instance where the portfolio is a fund aiming to closely track an index established by a recognised stock exchange, a maximum limit determined as the constituent weight in the index may be increased by not more than 10 percentage points weight of the constituent weight, the result of this calculation expressed as a percentage of the market value of all the securities comprised in the portfolio.

CHAPTER 2
MONEY MARKET PORTFOLIOS

10. For the purposes of this Chapter –

(a) "interest rate swap" means a transaction for the swap of interest rates;

(b) "maturity date" means the date on which an issuer or guarantor is obliged to repay the principal or capital amount and interest due on a money market instrument;

(c) "money market portfolio" means a portfolio consisting only of money market instruments in the currency of Namibia;

(d) "weighted average duration" means a measure of the average length of time to maturity of all of the underlying instruments in the portfolio weighted to reflect the relative holdings in each instrument, where the maturity of a floating rate instrument is the time remaining until the next interest reset to the money market rate, and not the time remaining before the principal value of the instrument must be repaid; and

(e) "weighted average legal maturity" means the weighted average of the remaining life of each instrument held in a portfolio, meaning the time remaining until the principal value is repaid in full, disregarding interest and any discounts.

11. (1) A manager may include money market instruments issued or guaranteed by the following institutions, whether listed on an exchange or not, in a money market portfolio subject to the conditions and the limits as specified below:

(a) the Government of Namibia, to an amount of 100% of the market value of all the securities comprised in the portfolio;

(b) a government in the Common Monetary Area, subject to the condition that Namibia remains a member of the Common Monetary Area, to an amount of 90% of the market value of all the securities comprised in the portfolio, where the gross domestic product of the country concerned exceeds N$100 billion per government;

(c) a foreign government, which has been assigned a foreign currency sovereign rating not lower than that of Namibia, to an amount of 35% of the market value of all the securities comprised in the portfolio per government;

(d) Bank of Namibia to an amount of 100% of the market value of all the securities comprised in the portfolio;

(e) African Development Bank to an amount of 50% of all the assets comprised in the portfolio;

(f) a state-owned enterprise, a local authority council or a regional council in Namibia or an equivalent institution in the Common Monetary Area or in a foreign country, not exceeding –

(i) 20% of the market value of all the securities comprised in the portfolio per institution in Namibia;

(ii) 15% of the market value of all the securities comprised in the portfolio per institution in the Common Monetary Area, on the condition that the instrument of the institution in the Common Monetary Area is listed and traded on a recognised exchange;

(iii) 10% of the market value of all the securities comprised in the portfolio per institution in a foreign country, on the condition that the instrument of the institution in the foreign country is listed and traded on a recognised exchange; or

(iv) 5% of the market value of all the securities comprised in the portfolio per institution in the Common Monetary Area or foreign country where the instrument is not listed, and the total assets of the institution exceed N$5 billion as reflected in the available audited financial statements which are not more than one year old;

(g) a local or foreign bank which forms part of a group of companies (in terms of the Companies Act) of which the holding company is listed on an exchange, not exceeding per institution –

(i) 30% of the market value of all the securities comprised in the portfolio if the market capitalisation of the institution exceeds N$5 billion; or

(ii) 20% of the market value of all the securities comprised in the portfolio if the market capitalisation of the institution is between N$500 million and N$5 billion;

(h) the Post Office Savings Bank as defined in section 1 of the Posts and Telecommunications Act, 1992 (Act No. 19 of 1992) or a Namibian building society, not exceeding per institution –

(i) 20% of the market value of all the securities comprised in the portfolio where the total assets of the institution exceed N$5 billion as reflected in the available audited financial statements which are not more than one year old; or

(ii) 10% of the market value of all the securities comprised in the portfolio where the total assets of the institution as reflected in the available audited financial statements institution which are not more than one year old are between N$500 million and N$5 billion;

(i) an institution incorporated in Namibia and authorised in terms of its memorandum of association to issue such securities, not exceeding, per institution –

(i) 20% of the market value of all the securities comprised in the portfolio, where the institution is listed on an exchange with a market capitalisation of not less than N$500 million; or

(ii) 10% of the market value of all the securities comprised in the portfolio where the institution is not listed, with total assets of the institution, as reflected in the latest audited annual financial statements which are not more than one year old, are between N$100 million and N$500 million;

(j) an institution in the Common Monetary Area and authorised in terms of its memorandum of association or founding documents to issue such securities, not exceeding, per institution –

(i) 15% of the market value of all the securities comprised in the portfolio where the institution is listed on an exchange with a market capitalisation of not less than N$2 billion; or

(ii) 5% of the market value of all the securities comprised in the portfolio where the institution is not listed with total assets as reflected in the latest audited financial statements which are not more than one year old, exceed N$1 billion; and

(k) an institution in a foreign country, other than the Common Monetary Area, not exceeding per institution –

(i) 10% of the market value of all the securities comprised in the portfolio where the institution is listed on an exchange with a market capitalisation of not less than N$5 billion; or

(ii) 5% of the market value of all the securities comprised in the portfolio where the institution is not listed, with total assets as reflected in the latest audited financial statements which are not more than one year old, exceed N$2 billion.

(2) In order to determine the market capitalisation of an internationally listed group holding company, a conversion must be done to the Namibia Dollar at the prevailing foreign exchange rate at the date of inclusion of the instrument and thereafter at least once every 30 days.

(3) Where, after the date of inclusion of any money market instrument in a money market portfolio, a reduced inclusion limit becomes applicable to that instrument, the manager must rectify the position within 30 days of such reduced limit becoming applicable, on condition that if the manager and the trustee are of the view that rectification would be detrimental to a particular portfolio, the manager must, within seven days of the date of becoming aware of the change in limits, submit a detailed plan setting out measures to rectify the position to NAMFISA, for consideration for approval.

(4) Where a manager is unable to comply with any limit prescribed in this clause through no fault of its own, the manager must, if the non-compliance is not rectified within 30 days of the date on which the manager becomes aware of the non-compliance, submit a detailed plan setting out measures to rectify the position to NAMFISA for consideration for approval.

Reduction in value of participatory interests

12. (1) A reduction in value occurs where a loss on a sale or a default of a money market instrument results in a loss greater than the income accrued in the portfolio in an accounting period.

(2) Within 21 days after any reduction in value, a manager must provide NAMFISA, and every investor in the portfolio, with details of the reduction in writing.

(3) A reduction in value must be reflected in the accounts and returns to be kept and rendered to NAMFISA by the manager in terms of the Act.

General provisions relating to money market portfolios

13. (1) At the time of its inclusion in a money market portfolio, a money market instrument may not have a residual maturity exceeding one year.

(2) The weighted average legal maturity of money market instruments included in a money market portfolio, based on the value of the total money market portfolio, may not exceed 120 days.

(3) The weighted average duration of money market instruments included in a money market portfolio, based on the value of the total money market portfolio, may not exceed 90 days.

(4) The following money market instruments may not be included in a money market portfolio –

(a) money market instruments having no fixed maturity;

(b) money market instruments whose initial interest rates are not known at the date of inclusion;

(c) money market instruments, including, but not limited to, credit linked notes whose return or redemption may be dependent on another instrument or another entity; or

(d) money market instruments, including, but not limited to, credit linked notes, whose return or redemption may be dependent on any event.

(5) The manager must at all times be able to calculate the return of the money market portfolio.

(6) The manager must assess the quality of a money market instrument, and in making its assessment, the manager must take into account all applicable factors including the liquidity profile and the nature of the instrument.

(7) In carrying out its due diligence investigation, the manager must not place inappropriate reliance on the credit rating of the instrument.

(8) A manager may include in a money market portfolio an interest rate swap on the condition that –

(a) the interest rate swap applies to a specific money market instrument included in the portfolio;

(b) the maturity date of the instrument whose rate is being swapped is not extended by the swap agreement;

(c) the interest rate swap is supported by an International Swaps and Derivatives Association (ISDA) agreement and a Credit Support Annex (CSA); and

(d) the inclusion of such an interest rate swap is only used for efficient portfolio management with the aim of reducing risk, reducing costs or generating capital or income for a portfolio with an acceptable level of risk and to achieve the investment objective of the portfolio.

(9) The manager must ensure that an unlisted transaction for the swap of interest rates is not used to leverage or gear the portfolio and is covered at all times.

(10) Where a manager applies a constant price to a participatory interest of a money market portfolio, the manager must –

(a) perform a mark-to-market valuation of the money market portfolio and each participatory interest on the last business day of each month to determine the variance of the mark-to-market value with the constant price; and

(b) report any such calculation and any adjustment electronically to NAMFISA on the NAMFISA ERS within 15 days of performing the calculation or adjustment.

(11) Where a manager applies a variable price to a participatory interest of a money market portfolio, the manager must ensure that the NAV of the portfolio is derived from market rates of the money market instruments constituting the portfolio.

(12) A manager must implement and apply a risk management programme to each money market portfolio, including stress testing of the portfolio on a quarterly basis, based upon hypothetical and historical events, such as a rise in short-term interest rate, an increase in investor redemptions, a downgrade or series of downgrades on portfolio securities, or a credit event, and taking into account –

(a) interest rate risk;

(b) liquidity risk;

(c) spread risk;

(d) credit risk; or

(e) any combination of (a), (b), (c) and (d).

(13) A money market portfolio's assets in liquid form must amount to at least 5% of the assets in the portfolio.

(14) Where the exposure of assets in liquid form falls below 5%, immediate and appropriate steps must be taken to correct the breach.

(15) For the purposes of this clause, assets in liquid form exclude money market instruments or accounts with foreign banks or any participatory interests in a money market portfolio.

(16) The manager must ensure that the money market portfolio does not take direct or indirect exposures to equities or commodities and that the use of derivatives is in line with the investment strategy of the portfolio.

(17) The manager must, on a daily basis, reconcile its records showing the amounts held on behalf of each client and the aggregate of client assets as well as those held by third parties.

CHAPTER 3
INCLUSION OF CERTAIN FINANCIAL INSTRUMENTS IN A PORTFOLIO

14. For purposes of this Chapter –

(a) "call option" means an option contract in terms of which the holder of the contract has the right, but not an obligation, to purchase the relevant underlying asset or to receive a cash settlement instead;

(b) "contract size" or "multiplier", in relation to a financial instrument, means the factor by which the price of an underlying asset is multiplied to arrive at the value of one contract as specified in either –

(i) the rules of the relevant exchange on which the financial instrument is listed; or

(ii) the terms and conditions as defined in the offering document of the relevant financial instrument;

(c) "delta factor", in relation to a financial instrument, means the requirement for an exposure calculation for financial instruments as determined in accordance with –

(i) a method prescribed by the relevant exchange for the specific financial instrument; or

(ii) the terms and conditions as defined in the offering document of the relevant financial instrument;

(d) "delta sign", in relation to a financial instrument, means the mathematical sign of the exposure of the financial instrument, determined by the sign of the delta factor, which can be either positive or negative, determined in accordance with –

(i) the delta factor calculation prescribed by the relevant exchange for the specific financial instrument; or

(ii) the terms and conditions as defined in the offering document of the relevant financial instrument;

(e) "effective exposure", in relation to a listed financial instrument, means the exposure as calculated in terms of this Standard;

(f) "listed financial instrument" means an instrument that is listed and dealt with on an exchange with full membership of the World Federation of Exchanges;

(g) "put option" means an option contract in terms of which the holder of the contract has the right, but not an obligation, to sell the relevant underlying asset or to receive a cash settlement instead;

(h) "transaction sign", in relation to a financial instrument, means the transaction direction, whether buying or selling, of a financial transaction, as calculated in accordance with this Standard;

(i) "underlying asset", in relation to a listed or unlisted financial instrument, means –

(i) any security;

(ii) an index as determined by an exchange;

(iii) a group of securities which are the subject matter of the financial instrument, whether such group of securities is represented by an index or not;

(iv) a currency rate; or

(v) an interest rate; and

(j) "unlisted financial instrument" means an instrument defined in clause 1(1)(g) of this Standard.

Inclusion of financial instruments in a portfolio

15. (1) A manager may include listed and unlisted financial instruments in a portfolio, subject to this Standard.

(2) In the application of sub-clause (1), a manager may only write option contracts in compliance with the conditions set out in this Standard, or sell option contracts, which have previously been bought.

Exposure limits for listed financial instruments

16. (1) The sum of the effective exposures of listed financial instruments to be maintained in terms of this clause, together with the market value of all the physical underlying assets in the portfolio, may not exceed 100% of the market value of the portfolio.

(2) The effective exposure to listed financial instruments based on any specific underlying asset, which is not an index or basket of securities, together with the market value of any physical holding of that specific underlying asset, may not exceed the limitations laid down in clause 6 of this Standard.

(3) For the purposes of this clause, the provisions of clause 7 apply with the necessary changes to the extent applicable, in respect of breaches, which are due to appreciation or depreciation of the market value of the relevant securities, or an amalgamation, cession, transfer or take-over.

Maintaining of certain assets in a portfolio of listed financial instruments

17. (1) A manager who, in accordance with the provisions of this Standard –

(a) sells future contracts, call options or call warrants, or buys put options or put warrants, based on specific underlying assets which are not indices or a basket of securities, must maintain an exposure to the market value of such underlying assets which is at least equal to the effective exposures of the mentioned underlying assets;

(b) sells futures contracts, call options or call warrants, or buys put options or put warrants, based on index futures or a basket of securities, must maintain an exposure to the same or similar underlying assets or other financial instruments with positive exposures to the same or similar underlying assets in the relevant portfolio, which is at least equal to the effective exposure of such listed financial instruments;

(c) buys futures contracts, call options or call warrants, or sells put options or put warrants based on any underlying asset, must maintain an exposure to assets in liquid form, which is at least equal to the effective exposure of such listed financial instruments;

(d) sells put options or put warrants, may maintain a bought put option or bought put warrant in place of assets in liquid form as required in paragraph (c) only if the strike price of the bought put option or bought put warrant is not lower than the price of the sold put option or put warrant;

(e) sells call options or call warrants, may maintain a bought call option or bought call warrant in place of underlying assets as required in paragraph (a) or (b) only if the strike price of the bought call options or call warrants is lower than the price of the sold call option or call warrant;

(f) sells or buys multiple options or multiple warrants or futures based on the same underlying assets which are not indices or a basket of securities with positive net effective exposure, must maintain assets in liquid form as prescribed in paragraph (c);

(g) sells or buys multiple options or multiple warrants or futures based on index futures or a basket of securities with positive net effective exposure, must maintain assets in liquid form as prescribed in paragraph (c);

(h) sells or buys multiple options or multiple warrants or futures or basket of securities based on the same or similar underlying asset with negative net effective exposure, must maintain assets as prescribed in paragraph (a) or (b) as applicable; or

(i) invests in currency futures, must maintain an exposure to assets in liquid form which is at least equal to the effective exposure of such currency futures.

(2) The duration exposure to non-equity securities may be hedged and netted with a financial instrument whose underlying asset is a government bond, a basket of government bonds or a government bond index, a corporate bond, a basket of corporate bonds or a corporate bond index, a Namibian interbank swap rate, inflation rate, the repurchase rate, or any other rate that is an index. However, any consequential or residual spread exposure as a result of the netting must be accounted for and disclosed.

Maintaining of certain assets in a portfolio for unlisted financial instruments

18. (1) A manager, who in accordance with the provisions of this Standard, includes in a portfolio an unlisted financial instrument, must ensure at all times that -

(a) the net negative mark-to-market exposure of the unlisted financial instrument is at all times covered by assets in liquid form; and

(b) in the case of net positive mark-to-market exposure of the unlisted financial instruments, the exposure be aggregated to all existing physical underlying assets and effective exposures to the same issuer or guarantor and the aggregate must at all times remain within the limits as set out in Chapter 1 of this Standard.

(2) Netting is only permissible with respect to the same or similar unlisted financial instruments with the same issuer or guarantor, provided that the manager is able to legally enforce netting arrangements with that issuer or guarantor.

(3) The provisions of sub-clause (2) will similarly apply with the necessary changes to unlisted financial instruments.

(4) The manager must ensure that unlisted financial instruments are not used to leverage or gear the portfolio and that the unlisted financial instruments are covered at all times.

Calculation of effective exposure for listed financial instruments

19. (1) The exposure of a futures contract or index tracking certificate of an underlying asset, group of underlying assets or an index must be calculated as the product of –

(a) the number of contracts;

(b) the relevant contract size; and

(c) the current market value of the underlying asset, group of underlying assets or index.

(2) The exposure of an option contract or a warrant to an underlying asset, group of underlying assets, index or index future, must be calculated as the product of –

(a) the number of option or warrant contracts;

(b) the relevant contract size;

(c) the current market value of one relevant underlying asset, one group of the underlying assets, an index or index future; and

(d) the delta factor.

(3) The effective exposure to any listed financial instrument must be calculated as the product of –

(a) the exposure, calculated in accordance with sub-clause (1) or (2); and

(b) the transaction sign.

(4) The transaction sign is positive for any listed financial instrument purchased and negative for any listed financial instrument sold.

(5) The net effective exposure to listed financial instruments on the same or similar underlying asset is the sum of the effective exposures of all the listed financial instruments to the same or similar underlying asset.

FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021

COLLECTIVE INVESTMENT SCHEMES

FOREIGN EXCHANGES APPROVED BY NAMFISA, THE DUE DILIGENCE REQUIREMENTS FOR INVESTING ON SUCH EXCHANGES, AND THE DUE DILIGENCE REQUIREMENTS ON THE ISSUERS OF FOREIGN NON-EQUITY SECURITIES

Standard No. CIS.S.4.22

issued by NAMFISA under section 410(5)(m), read with sections 197 and 215 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. 2 of 2021), and it must be read with the regulations prescribed under the Act and the standards and other subordinate measures issued by NAMFISA under the Act;

(b) "credit rating" or "rating" means an assessment regarding the creditworthiness of an entity or obligation, expressed using an established and defined ranking system;

(c) "credit rating action" means to determine an initial credit rating, an upgrade of an existing credit rating, a downgrade of an existing credit rating, an affirmation of an existing credit rating, or a withdrawal of a credit rating;

(d) "credit rating agency" means an entity that is in the business of issuing credit ratings;

(e) "credit rating methodology" means the procedure by which a credit rating agency determines credit ratings, including the information that must be considered or analysed to determine a credit rating and the analytical framework used to determine the credit rating, including, as applicable, the models, financial metrics, assumptions, criteria, or other quantitative or qualitative factors to be used to determine the credit rating;

(f) "credit rating process" means all the steps taken with respect to a credit rating action including, but not limited to, the credit rating agency's selection and assignment of analysts to work on the matter, application of the credit rating methodology, decision-making activities, interaction with the rated entity, obligor, originator, underwriter, or arranger, and as applicable, dissemination of the credit rating publicly or to subscribers;

(g) "due diligence" means the degree of prudence and necessary care that is reasonably expected from the manager in investigating, evaluating and assessing the details of an investment option, in order to establish –

(i) suitability;

(ii) risk;

(iii) potential value; and

(iv) reward,

before formally entering into a business contract to invest the assets of a portfolio in foreign securities;

(h) "obligation" means a trading instrument, credit commitment, loan, or other similar product or transaction that has inherent credit risk; and

(i) "obligor" means the entity that is legally or contractually obliged to make payments on a rated obligation.

(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) "NAMFISA" as defined in section 1 of the Act;

(b) "foreign exchange" as defined under section 78(1) of the Act;

(c) as defined in section 168 of the Act –

(i) assets;

(ii) collective investment scheme;

(iii) investor;

(iv) manager; and

(v) portfolio; and

(d) "collective investment schemes in securities" as defined under section 195 of the Act.

Applicability

2. This Standard applies to a manager investing foreign securities in a portfolio of a collective investment scheme in securities, which foreign securities are traded on a foreign exchange approved by NAMFISA or are issued by a foreign entity.

Foreign exchanges approved by NAMFISA

3. Pursuant to section 197(1)(a) of the Act, NAMFISA approves the following foreign exchanges:

(a) any exchange that is a member of the World Federation of Exchanges; and

(b) any exchange that is a member of the African Securities Exchange Association.

Due diligence requirements

4. (1) When considering inclusion of foreign equity or foreign non-equity securities in a portfolio in accordance with sections 197 and 215 of the Act, a manager must conduct a due diligence investigation in accordance with the following guidelines:

(2) In respect of an exchange on which foreign equity and foreign non-equity securities are listed and traded:

(a) **Liquidity and repatriation of funds -** In considering a foreign exchange, the following must be taken into account:

(i) the overall liquidity of the exchange;

(ii) whether securities or derivatives can be bought and sold in a reasonable time, at best execution and in adequate amounts; and

(iii) the procedures and restrictions, if any, on the repatriation of funds to the Republic of Namibia;

(b) **Regulation** –

(i) The exchange must be subject to supervision by an authority, which must be a statutory body, an agency of a national government, state department of such government or another body designated for that purpose by one of said authorities; and

(ii) In addition, the following factors must be considered:

(aa) the degree to which members of the exchange are subject to formal supervision by the exchange or another body, and in particular whether compliance with capital adequacy requirements by members is supervised;

(bb) the involvement of a central securities depository and level of immobilisation or dematerialisation of scrip;

(cc) the existence of a form of contract guarantee, either a buying-in obligation by the exchange or other such arrangements to ensure that its members' transactions are settled;

(dd) the powers of the exchange or the supervising body to intervene in members' business in the event of misconduct and financial difficulties, including the power not to approve applications for membership, terminate membership and delist a security;

(ee) the initial listing standards and on-going supervision of securities traded on the exchange, including the publication of prospectuses and audited annual financial statements;

(ff) the everyday availability of current information about securities, derivatives, quotations, transactions, prices and spreads;

(gg) requirements for the issue of contract notes or their equivalents;

(hh) whether there is a requirement for trade reporting of the securities or derivatives or both to the exchange or other supervisory body;

(ii) whether the clearing and settlement arrangements normally used for transactions on the exchange are prompt and secure;

(jj) the risk of loss in the event of insolvency of a member of the exchange;

(kk) the manner in which the exchange investigates and deals with complaints; and

(ll) whether any type of guarantee fund is maintained to protect investors in respect of liabilities arising prior to the default of a member or a fidelity insurance policy exists as a front-line protection for member firms particularly in so far as employee fidelity is concerned;

(c) **Regular operation** –

(i) The exchange must have regular trading hours during which the listed foreign equity and non-equity securities may be traded; and

(ii) The following additional considerations must be taken into account:

(aa) the availability and timing of price and volume information and the manner in which it is distributed; and

(bb) in respect of listed foreign equity and non-equity securities the degree to which, and the speed at which, companies with listed foreign non-equity securities on the exchange must release price sensitive information, and the medium through which that information is distributed;

(d) **Recognised exchange -** The exchange must be recognised or registered as a market or exchange or self-regulatory organisation by an authority which must be a statutory body, an agency of a national government, a state department of such government or another body designated for that purpose by one of the said authorities; and

(e) **Open to the public -** Investments listed or admitted to dealing on the exchange must be freely available for trading by the public directly, or through members of the exchange, during normal trading hours. The extent to which overseas investors are permitted to hold securities listed and traded on the exchange must be considered.

(3) In respect of foreign non-equity securities which are not listed on an exchange:

(a) **Liquidity and repatriation of funds -** The following must be considered:

(i) overall liquidity in respect of unlisted foreign non-equity securities;

(ii) whether the unlisted foreign non-equity securities can be bought and sold in a reasonable time, at best execution and in adequate amounts; and

(iii) the procedures and restrictions, if any, on the repatriation of funds to the Republic of Namibia;

(b) **Nature of the foreign non-equity securities -** The manager must consider the relative or inherent risk levels of one security type compared to another and the appropriateness for its inclusion in a portfolio, for example, secured debt measured against non-secured debt, or government guaranteed debt measured against debt not guaranteed by a government;

(c) **Credit risk profile –**

(i) The manager must consider the likelihood or risk of loss of principal amounts or loss of a financial reward, stemming from an issuer's failure to repay a loan or otherwise meet a contractual obligation and the appropriateness for inclusion in a portfolio, for example, measuring risk against reward considerations, and the creditworthiness of an issuer; and

(ii) Accounting standards used by issuers to prepare financial statements should be of a high and internationally acceptable quality;

(d) **Maturity profile -** The manager must consider the maturity profile of an issuer to assess the issuer's ability to borrow and its liquidity position. Consequently, the manager must consider the appropriateness of the inclusion of the particular foreign non-equity security of the issuer in a portfolio;

(e) **Duration profile -** The manager must consider the sensitivity of the price (the value of principal amounts) of foreign non-equity securities to a change in interest rates. Consequently, the manager must determine the appropriateness of the inclusion of the particular foreign non-equity security in a portfolio;

(f) **Currency risk profile -** The manager must consider the risk that arises from the change in price of one foreign currency against the Namibia Dollar and other major currencies. Consequently, the manager must determine the appropriateness of the inclusion of the particular foreign non-equity security denominated in a specific foreign currency in a portfolio; and

(g) **Macro and micro economic factors –**

(i) Domestic political situation - The manager must reasonably consider all factors that contribute to a stable political environment that would be conducive to a stable investment environment;

(ii) Economic growth prospects - The manager must consider the economic growth prospects of a foreign country in order to assess the merits and prospects of investing in foreign non-equity securities issued by entities in a particular foreign country;

(iii) Monetary and fiscal policies - The manager must consider the monetary and fiscal policies of foreign country in order to assess whether it would be, and is likely to remain conducive to supporting a stable environment for investment; and

(iv) Open to foreign investors - The extent to which foreign investors are permitted to hold foreign non - equity securities must be considered.

(4) Where credit rating agencies, credit ratings and other third parties are used, the manager must –

(a) ensure that credit ratings may form one element, amongst others, of the due diligence process but do not constitute the sole factor supporting the credit analysis on an instrument;

(b) ensure that the credit rating agency has established, maintains, documents, and enforces a credit rating methodology for each class of entity or obligation for which the credit rating agency issues credit ratings. Each credit rating methodology should be rigorous, capable of being applied consistently, and, where possible, result in credit ratings that can be subjected to some form of objective validation based on historical experience;

(c) understand the methodologies, parameters and the basis on which the assessment of a credit rating agency was produced, and have adequate means and expertise to identify the limitations of the methodology and assumptions used to form that assessment;

(d) ensure that the credit rating agency has adopted reasonable measures designed to ensure that it has the appropriate knowledge and expertise, and that the information it uses in determining credit ratings is of sufficient quality and obtained from reliable sources to support a high quality credit rating. The manager must also have adequate means and expertise to challenge the methodology, parameters and the basis on which the assessment of a credit rating agency was produced;

(e) ensure that the credit rating agency has established, maintains, documents, and enforces policies, procedures, and controls designed to avoid issuing credit ratings, analyses, or reports that contain misrepresentations or are otherwise misleading as to the general creditworthiness of a rated entity or obligation;

(f) ensure that the credit rating agency has established, maintains, documents, and enforces policies, procedures, and controls to identify and eliminate, or manage and disclose, as appropriate, any actual or potential conflicts of interest that may influence the credit rating methodologies, credit rating actions, or analyses of the credit rating agency or the judgment and analyses of its employees;

(g) review with the client, its disclosures describing alternative sources of credit information in addition to external credit ratings and make available to investors, as appropriate, a brief summary description of their internal credit assessment process, including how external credit ratings may be used to complement or as part of the manager’s own due diligence internal credit assessment methods;

(h) ensure that a downgrade credit rating does not automatically trigger the immediate sale of investment assets. Should the manager decide to divest, the transaction must be conducted within a timeframe that is in the best interests of the investors; and

(i) ensure, when relying on a third party for the performance of operational functions which are critical for the provision of continuous and satisfactory services to clients and the performance of activities on a continuous and satisfactory basis, that it takes reasonable steps to avoid undue additional operational risk.

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