

## **CVM Instruction 296 of December 18, 1998**

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*Provides for registration of public distribution of collective investment contracts.*

The Chairman of the Brazilian Securities Commission (*Comissão de Valores Mobiliários* – CVM) hereby makes public that the CVM Board, at a meeting held on this date, pursuant to article 4, I, IV, and VI, article 8, I, article 16, I, and article 19, paragraph 5 of Law No. 6385 of December 7, 1976, and in line with article 1, paragraph 3 of Provisional Measure No. 1637-11 of November 20, 1998, has RESOLVED to issue the following Instruction:

### **SCOPE AND PURPOSE**

Article 1. Registration of public distribution of collective investment contracts is regulated by the provisions of this Instruction.

### **COLLECTIVE INVESTMENT CONTRACTS**

Article 2. When publicly offered, collective investment contracts generating rights to participation, sharing or compensation, including as a result of the provision of services, and deriving their income from the efforts of the undertaker or third parties, constitute securities which are subject to the provisions of Law No. 6385 of December 7, 1976.

Article 3. No public issue of securities or collective investment contracts may be distributed on the market without prior registration with CVM, which shall be conditional on compliance with the following requirements:

I. rendering of an in rem guarantee in an amount equal to at least 50% of the adjusted principal of the securities or collective investment contracts outstanding, held in treasury, and pending issuance or registration, whenever the total accumulated amount thereof exceeds the net equity of the issuer or the amount of R\$ 5.000.000,00; and

II. evidence by issuer of total placement of the issues previously registered with CVM, if applicable, or of cancellation of any unplaced securities. Submission of the application for registration prior to completion of the placement is hereby permitted.

Paragraph 1. When the adjusted value of the securities or collective investment contracts outstanding, held in treasury, and pending issuance or registration exceeds R\$ 10.000.000,00, in addition to providing a guarantee, the issuer shall be registered as a publicly-held company pursuant to CVM Instruction No. 202 of December 6, 1993.

Paragraph 2. The securities or collective investment contracts with a unit value equal to or greater than R\$ 150.000,00 and intended for placement solely with qualified investors, as defined in article 99 of CVM Instruction No. 302 of May 5, 1999, may be issued without the guarantees set forth in item I of this article.

Paragraph 3. The guarantee dealt with in item I of this article may only be given in assets that are free and clear of any liens, in a value commensurate with the total guaranteed amount, as per the appraisal report supporting the application for registration.

Paragraph 4. The guarantee dealt with in item I of this article may be totally or partially replaced, at the discretion of the issuer, by:

- I. a personal guarantee provided by a financial institution with an equity compatible with the total guaranteed amount; or
- II. an in rem guarantee on assets identical to those underlying the issue, or on assets that are free and clear of other liens, the value of which is compatible with the total guaranteed amount, as per the appraisal report substantiating the request for replacement.

Paragraph 5. Except for issues aimed at qualified investors, as set forth in article 3, paragraph 2 of this Instruction, registration of the issue may be denied if the feasibility study referred to in article 11, V hereof shows that the underlying securities or contracts, including those pending registration, together with those outstanding and held in treasury, impair the issuer's ability to pay, and said issue is reckless with respect to the risks to which it will expose prospective investors.

- ***Article 3 amended by CVM Instruction 350, dated April 3, 2001.***

Article 4. Any products or by-products intended for business purposes may qualify as underlying asset of collective investment contracts.

Sole Paragraph. Collective investment contracts shall be traded in units that are compatible with those common to the trading in their respective underlying asset.

Article 5. Collective investment contracts shall contain the following information:

- I. Heading and specification: "COLLECTIVE INVESTMENT CONTRACTS IN \_\_\_\_\_."
- II. Contract number and series.
- III. Identification of the issuer, including the corporate name, field of activity,

headquarters, General Taxpayers' Register Number (CGC) of the Ministry of Finance, and the company's registration number with CVM.

IV. Number and date of registration of the public distribution with CVM.

V. Identification of the investor, including his/her name and CPF.

VI. Description of the characteristics of the underlying asset, the trading unit, as well as the quantity of the latter represented by the contract.

VII. Unit price of the underlying asset, denominated in Brazilian currency on the date of signing.

VIII. Initial value of the contract.

IX. Maturity date of the contract.

X. Method of payment for the subscription, whether in cash or in installments; if in installments, inform the number of installments and the respective calculation method.

XI. Specification of financial redemption conditions at maturity, and before maturity, if applicable, as well as of the method for calculation of the investor's yield.

XII. Conditions for physical redemption, if any, specifying the place of delivery, taxes, freight, storage costs and other expenses as may be necessary.

XIII. Specification of management and other fees that may be charged to the investor, stating the collection method.

XIV. Specification of the guarantee, if any.

XV. Description of the procedures to be taken when the investor defaults, in the case of term sales.

XVI. Description of the consequences and penalties resulting from issuer's default.

XVII. Identification of the registry of deeds and documents where the contract is registered.

XVIII. Express statement of the investor to the effect that it is aware of the terms set out in the prospectus.

XIX. Statement of the issuer to the effect that it undertakes to invest the proceeds of the issue within 90 days from actual fund-raising, as follows:

(a) at least 50% in the asset underlying the security or contract;

(b) the balance in:

1. fixed-income securities issued by the National Treasury or high-grade private institutions;
2. fixed-income funds;
3. derivatives, exclusively as hedge against price fluctuations of the underlying asset or of the input required to carry out the contractual obligations.

XX. The same provisos dealt with in article 11, sole paragraph, I through III of this Instruction, prominently stated.

XXI. Place and date of the contract issue.

XXII. Space for signature of the investor and legal representatives of the issuer.

Sole Paragraph. No promise as regards financial profitability is permitted in the contract.

- *Article 5 amended by CVM Instruction 350, dated April 3, 2001.*

## REGISTRATION OF PUBLIC DISTRIBUTION

Article 6. An application for registration of public distribution of collective investment contracts shall only be reviewed if the company's registration is updated pursuant to CVM Instruction No. 270 of January 23, 1998.

Article 7. The application for registration shall be substantiated with the following documents (two counterparts):

I. Request signed by the issuer's legal representative, containing information on:

- (a) the amount of the issue, and the number of series into which it is divided;
- (b) the methods adopted for public distribution of the contracts.

II. Copy of the model collective investment contract.

III. Copy of the contract entered into between the issuer and the intermediary, if any.

IV. Draft prospectus, pursuant to article 11 of this Instruction.

V. Certificates evidencing the ownership of real properties and/or copy of real property lease or rental agreements for execution of the undertaking.

VI. Proof of payment of the inspection fee relating to registration of public distribution of collective investment contracts.

## VII. Copy of the bylaws.

Article 8. Registration shall be deemed granted unless the application is denied within 30 days from CVM's receipt thereof.

Paragraph 1. The review period may be stayed only once, if CVM requests additional information or conditions said registration to changes in the respective documentation.

Paragraph 2. A period of no more than sixty days from receipt of the respective correspondence shall be granted for fulfillment of any requirements.

Paragraph 3. Registration shall be denied if the company fails to comply with CVM's requirements within the time frame stipulated in the preceding paragraph.

Paragraph 4. Granting or denial of registration shall be informed to the company.

Paragraph 5. Failure to submit all the documents set out in article 7 of this Instruction shall entail prompt denial of the application.

Article 9. After the application is granted, any and all notice with respect to the issue shall state the registration number ascribed by CVM.

Article 10. CVM may suspend, at any time, any distribution made in a manner inconsistent with the conditions spelled out in the registration, or if there are any signs of illicit acts or fraud.

## PROSPECTUS

Article 11. *Prospectus* is a document containing basic data on the issuer and the distribution, as well as the reasons justifying the expected success of the undertaking; it shall provide at least the following information:

I. The prospectus cover shall indicate the nature of said document and that it refers to a distribution of COLLECTIVE INVESTMENT CONTRACT, as well as the type of underlying asset.

II. Total quantity of the underlying asset contemplated by the public distribution, stating the respective order number, as well as the number and date of registration with CVM.

III. Identification of the issuer, including: corporate name, field of activity, nationality, headquarters, general taxpayers' register number (CGC) and number of registration with CVM, name of the market relations officer, name or corporate name of the independent auditor, ownership structure and distribution of the capital stock of the controlling shareholders up to the ultimate level of individuals.

IV. Overview of the company and its economic activities as issuer of collective investment

contracts, including information on farms, own and leased facilities, usable area intended for the underlying asset, production processes, and major clients and suppliers.

V. Feasibility studies containing at least the following information: economic analysis of the field of activity of the issuer, economic and financial analysis of the undertaking contemplated by the application for registration, including a schedule of physical evolution of the production, projected cash flow and return on investment, explaining clearly and objectively each of the assumptions adopted, as well as the impact of the project on the company as a whole, description of the processes and technology used, and risk factors relating to the undertaking.

VI. Financial statements and notes, as set forth in article 176 of Law No. 6404 of December 15, 1976, for the three latest financial years and, if applicable, consolidated financial statements prepared in accordance with the law in effect (Law 6404/76, articles 249 and 250, and CVM regulations), accompanied by explanatory notes and the independent auditor's report, for the latest financial year, or prepared on a date after closing of the financial year, should in such period the investments plus credits of any kind in controlled companies represent over 30% of the company's net equity.

Sole Paragraph. In addition to the information requested in the main section of this article, the prospectus shall contain the following texts, written in an easily readable and visible print:

I. 'CVM MAKES NO ASSURANCES AS TO THE TRUTHFULNESS OF THE INFORMATION RENDERED BY THE ISSUER NOR PROVIDES ANY OPINION ON THE STANDING OF THE UNDERTAKING, THE ISSUER OR THE PROFITABILITY AND RISK OF THE INVESTMENT STATED IN THIS COLLECTIVE INVESTMENT CONTRACT.'

II. 'THE FINAL PROFITABILITY OF THIS INVESTMENT IS SUBJECT TO PRICE FLUCTUATIONS IN \_\_\_\_\_ (THE TRADING UNIT OF THE UNDERLYING ASSET).'

III. 'THIS INVESTMENT IS NOT A RURAL PARTNERSHIP UNDER LAW No. 8023 OF APRIL 12, 1990.' (APPLICABLE TO AGRICULTURAL COMMODITIES AS UNDERLYING ASSETS)

- ***Sole paragraph of Article 11 amended by CVM Instruction 350, dated April 3, 2001.***

Article 12. The prospectus shall be available to the public for consultation during the distribution period at the places where the contracts are sold and with the salespersons.

Sole Paragraph. Distribution may only be initiated after the prospectus is made available to the public.

Article 12-A. Issues of securities or collective investment contracts shall also be accompanied by an informative booklet, written in plain and straightforward language,

which shall provide a summary of the information stated in the prospectus, highlighting the risks to which investors in the offered securities or collective investment contracts are exposed, and repeating in a clearly visible print the provisos dealt with in the sole paragraph of article 11 of this Instruction.

Sole Paragraph. The informative booklet referred to in the main section of this article shall be previously approved by CVM and handed out to all buyers of collective investment contracts.

- *Article 12-A added by CVM Instruction 350, dated April 3, 2001*

## OBLIGATIONS OF THE ISSUER

Article 13. The issuer shall:

I. send to CVM, by the 10<sup>th</sup> day of the month following that of the trading, a monthly report on contract sales, as well as the respective unpaid amount vis-à-vis the total amount authorized in the registration.

II. maintain a qualified technical department to provide analysis and follow-up services in connection with the undertaking, or contract such services with third parties in order to assist and provide technical clarifications to investors.

III. keep the prospectus at the public's disposal during the period of distribution of the collective investment contracts.

IV. notify CVM of the end of public distribution within two business days thereafter.

V. provide investors from time to time with a statement of investments and yields for income tax purposes, subject to the provisions of the Federal Revenue Office.

Article 14. The issuer shall submit quarterly information statements (ITR), providing the following data on the authorized series with open contracts:

I. Physical inventory of the underlying asset of the contracts, specifying the respective location and age.

II. Liabilities resulting from open contracts, specifying the number of open contracts, their equivalence in trading units to which the underlying asset refers, method of payment (cash or term payment), and maturity date of the contracts.

III. Number of investors per type of contract, specifying the type of investor (individual or legal entity) and the investment modality (cash or term).

IV. Comparative chart showing the project evolution vis-à-vis the values and parameters set forth in the feasibility study presented in the prospectus.

Sole Paragraph. The chart referred to in item IV of this article shall specify the allocation

of the proceeds, duly audited by an independent auditor.

- *Sole paragraph of Article 14 added by CVM Instruction 350, dated April 3, 2001.*

### **"SPECIFIC ACCOUNTING STANDARDS**

Article 14-A. The issuer of collective investment contracts backed by extractive, animal and agricultural products intended for sale shall appraise its stocks at their net realizable value, whenever these stocks have immediate liquidity, the activity sector thereof is the primary sector, and the costs and expenses to be incurred to put up the product for sale have been determined.

Sole Paragraph For the purposes of this article, net realizable value shall mean the sale price less any taxes and other sale-related costs and expenses.

- *Article 14-A added by CVM Instruction 350, dated April 3, 2001.*

Article 14-B. The obligations relating to collective investment contracts shall be adjusted by the accrual method, on the basis of the adjustment and remuneration indexes set forth in the contracts, adopting at least a monthly proration criterion.

- *Article 14-B added by CVM Instruction 350, dated April 3, 2001.*

Article 14-C. Without prejudice to the provisions of article 14 of CVM Instruction 296/98, the issuer shall prepare a reconciliation note, evidencing the changes occurred in the book value of stocks between the beginning and end of the financial year, contemplating:

- (a) the variation resulting from an increase in stocks;
- (b) the variation resulting from a decrease in stocks;
- (c) the variation resulting from price fluctuations;
- (d) sales made;
- (e) purchases made;
- (f) other variations."

- *Article 14-C added by CVM Instruction 350, dated April 3, 2001.*

### **ADVERTISING MATERIAL**

Article 15. Advertising texts for disclosure, advertisement or promotion of the distribution of collective investment contracts may only be used after registration is granted, and shall require CVM's examination and prior approval.



Sole Paragraph. If CVM does not express itself within two business days, the advertising texts shall be deemed approved.

## TRUTHFULNESS OF THE INFORMATION

Article 16. The senior managers and controlling shareholders of the issuer shall be responsible and liable for the truthfulness of the information submitted to CVM.

Article 17. The registration dealt with in this Instruction does not imply CVM's assurance as to the truthfulness of the information provided, or its opinion on the company's standing and on the collective investment contracts.

## VIOLATIONS AND PENALTIES

Article 18. The following actions shall constitute a serious violation for the purposes of article 11, paragraph 3 of Law No. 6385 of December 7, 1976, without prejudice to the fine dealt with in paragraph 1 of that same article:

I. Distribution carried out in a manner inconsistent with the conditions stated in the application for registration.

II. Distribution carried out without prior registration with CVM.

III. Allocation of the proceeds for purposes other than those stated in the prospectus.

- ***Article 18 amended by CVM Instruction 350, dated April 3, 2001.***

Article 19. Failure to observe the time frame established in article 13, I of this Instruction shall constitute an objective violation (*infração objetiva*), which may be ascertained by summary administrative investigation proceedings.

## FINAL AND TEMPORARY PROVISIONS

Article 20. The company that carries out public distribution of collective investment contracts issued thereby shall have 60 days to adapt to the provisions of this Instruction.

Article 21. This Instruction shall come into force on the date of its publication in the Official Gazette of the Federal Executive.

FRANCISCO AUGUSTO DA COSTA E SILVA

CHAIRMAN