

REGULATIONS OF INTEREST TO FOREIGN INVESTORS



CVM Instruction 350 of April 3, 2001

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Amends and adds provisions to CVM Instruction 296 of December 18, 1998, which provides for registration of public distribution of securities or collective investment contracts.

The Chairman of the Brazilian Securities Commission (*Comissão de Valores Mobiliários* – CVM) makes public that the CVM Board, in a meeting held on the date hereof, in light of the provisions of 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 keeping with article 1, paragraph 3 of Law No. 10198 of February 14, 2001, has RESOLVED to issue the following Instruction:

Article 1. The provisions of CVM Instruction No. 296 of December 18, 1998 listed below shall henceforth take effect with the following wording:

"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 5.

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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."

"Article 11.

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)"

"Article 14.

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."

"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 2. The following provisions shall be added to CVM Instruction No. 296 of December 18, 1998:

"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."

"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-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-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 3. The issuers of securities or collective investment contracts that have already obtained registration for the issue with CVM or whose applications for issue registration are pending on the date this Instruction comes into force shall have 90 days to apply for registration as a publicly-held company, as dealt with in article 3, paragraph 1 of CVM Instruction 296/98, with the wording given thereto by article 1 of this Instruction.

Article 4. This Instruction shall take effect on the date of its publication in the Official Gazette of the Federal Executive, and shall govern all applications for registration of public distribution of collective investment contracts filed with CVM and not yet granted.

JOSÉ LUIZ OSORIO DE ALMEIDA FILHO

Chairman